LEGAL IMPLICATIONS IN UNION CARBIDE BHOPAL GAS LEAK DISASTER CASE

DISSERTATION

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BY

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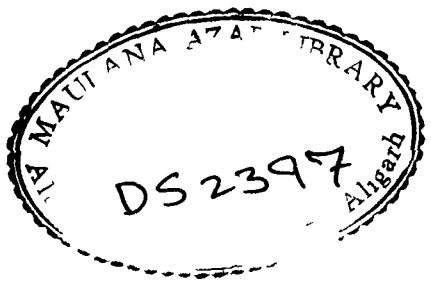
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CERTIFICATE

This is to certify that Mr.Ashok Kumar Premi has completed his dissertation entitled "LEGAL IMPLICATIONS IN UNION CARBIDE BHOPAL GAS LEAK DISASTER CASE" in partial fulfilment of the requirements for the award of the degree of Master of Laws.

He has conducted the study under my supervision.

(SALEEM AKHTAR)

C O N T E N T S

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ABBREVIATION

AIR	-	All India Reporter
Bhopal Act 1985	-	The Bhopal Gas Leak Disaster (Processing of claims) Act, 1985.
CBI	-	Central Bureau of Investigation
CPC	-	Civil Procedure Code
EPW	-	Economic Political Weekly
Govt.	-	Government
ILI	-	Indian Law Institute, New Delhi
JPMDL	-	Judicial Panel of Multi-district Litigation
JT	-	Judgement Today, New Delhi
MIC	-	Methyle Isocynate
P	-	Page No.
Rs.	-	Indian Rupees
SC	-	Supreme Court
SCR	-	Supreme Court Reporter
SDNY	-	Southern District of New York
UCC	-	Union Carbide Corporation, USA
UCIL	-	Union Carbide India Limited
US $	-	United State's Dollar

(1) OBJECT OF STUDY

(2) STATEMENT OF PROBLEM

(3) PLAN OF STUDY

Object of Study

The recent decision of the Supreme Court in Union Carbide Corporation's Gas leak case, has opened so many questions relating to the Environment Pollution, Rights of the victims to compensation, Human rights against chamical disaster of hazardous industries, Industrial disputes Act, Factory Act, Workmen's Compensation Act and others.

The main object of this study is to highlight the legal issues relating to representation of the suit against the disaster of multinational corporation, the compensation of the victims of such disasters and the lack of imposition of criminal liability against the officials of such corporation with special reference to the Bhopal Gas leak disaster case.

Statement of Problem

The Bhopal gas leak disaster of 2-3 December 1984, was the world's worst industrial disaster and created a legal crises in the labour Jurisprudence, particularly relating to safety measures, liability of industries towards victims.

The Govt. of India after considering the prevailent laws of USA and India about compensation claims, representing the suit on behalf of victims against multinational corporation, as insufficient and inefficient, passed the Bhopal Gas Leak Disaster (processing of claims) Act, 1985. By exercising section 3 of this Act, the Govt. of India on behalf of victims filed the compensation suits in court of Southern District of New York, U.S., which was transferred to the jurisdiction of Indian Court, especially in District Court of Bhopal. Then the question arises, why the suit transferred to Indian Court?

Another problem which arose before different court from Bhopal court to Supreme Court, was that, what is the liability of hazardous industries towards industrial disaster? Whey the Supreme Court in Bhopal disaster case followed a half-way ruling and denied to follow the principle of strict liability and absolute liability laid down by House of Lords of England in Rylands V. Fletcher's case and directions given by itself in Shriram Industry's case.

Other major issues -

(i) Whether the appropriate and adequate standard of safety measures were adopted or not.

(ii) Whether it is a case of Negligence or not.

(iii) Whether the case falls within the purview of strict liability or not.

(iv) Whether the interim relief awarded by the Supreme Court of US $ 470 million is adequate or not.

(v) Whether the Bhopal Gas Leak Disaster (processing of claims) Act 1985 is comprehensive or have any lacuna on criminal liability of hazardous industries.

Plan of Study

The First Chapter deals the Historical Background of accident or disaster of Bhopal. In this chapter attempt has been made to findout the causes of accident by examining the available safety measures in Union Carbide India Ltd. plant in Bhopal.

Second Chapter highlighted the important aspects by which the Govt. of India filed a suit against Union Carbide Corporation in U.S. Court, which was transferred to India.

In Third Chapter attempt has been made to analyse the responsibility of the hazardous industries in case of chamical disaster. In this chapter, I have critically analyse the Ryland V. Fletcher, Shriram Industry's case and finally in Bhopal gas leak case.

The following important questions discussed during the course of the study in this chapter they are:

(1) Why the Supreme Court of India has not fully

supported its own direction given in Shriram Industry's case.

(2) Why the Supreme Court supported the compensation award of U.S. $ 470 million to the victims.

Fourth chapter devoted to critically analyse the various provisions of Bhopal Gas leak Disaster (processing of claims) Act, 1985.

In Fifth Chapter, attempt has been made to conclude the present work with some suggestions.

CHAPTER-I

BACKGROUND OF THE BHOPAL DISASTER

BACKGROUND OF THE BHOPAL DISASTER

"We live in a world in which corporate entities hold the power of life and death over the rest of us. Large corporation today control technologies that can prove lethal to entire communities and pose a threat to the integrity of the biosphere as a whole."[1]

Industrialization although gave an impetus and prosperity to economic world, even though it is not a phase from all default. It brought with it the demerits of industrial era namely of destruction havoc, pollution of environment and mass destruction of human population. Modern technology has posed an eminent danger to the very existence of human race on earth and of other living being. The entire country is shocked and dismayed at the serious accident in the plant of union carbide at Bhopal resulting in the leakage of a highly poisonous gas "Methyl isocynate" (MIC) in the environment. In the biggest ever environmental disaster in the world, it is reported that about 2660 people- majority being women and children - died and 30,000 to 40,000 were crippled as a result of exposure of this gas.[2]

The tragedy began with the discharge of the deadly poisonous gas from the pesticide plant of the company located in the out skirt of Bhopal at the night of December

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1. RUSI ENGINEER : PUNISHING CORPORATE NEGLIGENCE; EPW, April 8, 1989, p.711.
2. The figures provided by the Govt. of India to the High Court of Madhya Pradesh.

2, 1984. The plant manufactures a particular brand of pesticide known by the generic name carbaryl and the trade name 'Sevin'. In the manufacture of this product, both phosgene and methyl isocynate (MIC) alongwith other substances at intermediates are utilised. The MIC is stored in tanks before its conversion to the pesticide. Due to increase in temperature and pressure, the liquid MIC gushd out as a gas through the safety valve and passed through the stack into the outside environment leading to the calamity that befell the population of Bhopal. The Union Carbide mannual on "Standard operating procedure" warns that if water leaks into the system, it "results in the evolution of a lot of gas (thereby increasing equipment pressure) and liberation of a lot of heat (thereby raising temperature)."[3]

The accident occured at the time when the plant was completely shut down and such there was no production, only usual maintenance was carried out during this period. For the storage of MIC, three tanks which are interconnected were utilised. Generally, one tank is always kept empty and the other two tanks filled with MIC. On the day of accident, the operating staff noted a high pressure buildup in one of the tanks filled with MIC. It was reported that the pressure in the tank went up to almost 55 Ibs, per sq. inch and as such the safety valve was blown off. The

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3. India Today 31 December 1984, Editorial Edt. by Aron Purje.

poisonous gas from the tank thus gushed out and passed through the scrubber. Since the scrubber was designed for neutralisation of a very small quantity of the gas that might leak out, the whole quantity of the gas passed unneutralised through the pipe line in to the atmosphere. The lethal methyl isocynate gas enveloped an area of about 40 sq. Kilometres on the wintry midnight, and brought havoc including sensation of burning of eyes, horseness in the throat and finally death. It is estimated that virtually one fifth of the eight lakh population in the city was effected by the deadly gas. Thousands of survivors are reported to be suffering from the dangerous effects of the gas. Besides human beings a large number of animals such as cattle, dogs, cats, birds succumbed to the effects of the poisonous gas. There are reports of adverse effects on vegetation too.

The sequence of events, of December 2-3, 1984, as reconstructed with approximate timings, went as follows:

- 11:00 p.m. The pressure in tank 610 is noticed to have risen from the normal 3 pounds per square inch to 10. As it happens, the pressure in neighbouring tank 611 has been increased deliberately (by injecting nitrogen into it) to move the MIC into the pesticide manufacturing unit. Consequently, the new staff pays little heed to the pressure rise in tank 610 possibly believing that this tank too

has been pressurised by the earlier shift to transfer MIC to the pesticide unit.

- 11:30 p.m. The operating staff in the utility area sense a little irritation in the eyes because of a small MIC leak and ignore it because tiny leaks are not unusual. Around midnight, the operators around the MIC unit also sense the leak, and they report it to production Assistant Shakil Ibrahim Qureshi. At the same time, the MIC control room operator reports to Qureshi that the pressure in tank 610 is high.

- 12:00 A few minutes after mid night, Qureshi and an operator check tank 610 and find that the rupture disc, a device that burst when the pressure reaches 40 pounds per square inch, has indeed burst and the safety valve, which is the next check point, has popped.

- 00:30 a.m. The water washing the tubes is hurriedly turned off, but it is already too late to save the situation.

- 1.00 a.m. Untreated MIC vapour is seen escaping through the nozzle of the 33 metre high atmosphere vent live out into Bhopal's Cool night air.[4]

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4. India Today, 31 December, 1984.

The factory had two sirens: a loud, continuous one for public and a muted one over the public adress system meant for factory workers alone. The public siren was put on around 1 a.m., but only for a few minutes, and after that the muted siren took over. This was as per Carbide procedure which was evolved to avoid alarming the public around the factory over tiny leaks. But in the present case it was gross negligence that the continuous siren was put off although it was already known by then that MIC was escaping in huge quantities. It was not until 2.00 a.m., one hour later, that the public siren was sounded once again, full blast, to alert the already testified, injured and dying in the city.

Mr. Warren Anderson, Chairman of Union Carbide Corporation claimed that, "we have had an excellent record for safety; we are among the best in the industry", has contributed to 11 accidents worldwide between 1973 and 1985 involving toxic gases like MIC, phosgene, benzene and the like. Anderson made this preposterous claim in April 1986 when the Bhopal victims were still struggling for medical relief and rehabilitation within a year another gas leak from Union Carbide's own plant in west verginia (August 1985) necessitated the hospitalization of 135 persons.[5] The following are the details of accident in the factory of

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5. LEX ET JURIS : DOSSIER OF DISASTERS, March 1989, p.38-39.

Union Carbide India Limited:

Date of Accident	No. of victims
24th November 1978	No casualty
1981	Md.Ashraf died
10th February 1982	25 workers were seriously affected.
5th October 1982	No casualty
2-3rd December 1984	2660 died (Approx.)[6]

Several other major disaster of the word are listed below:

- Basle, Switzerland, November 1986: Fire destroyed a ware House belonging to sandoz spilling 30 Tonnes of agricultural chamicals and solvents and about 1,000 Kg. of mercury into the Rhine. Tons of fish perished, though no people died.

- Chernobyl, U.S.S.R., April 1986: 30 died, 200 hospitalised according to official figures following an explosion and fire at its nuclear plant.

- Mexico City, November 1984: Explosion of liquified gas tanks owned by Pemex, a Maxican Government Company; 452 Slumdwellers dead, 4,248 injured, 1,000 recorded as missing.

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6. Science Age Jan. 1985, Ed. Surendra Jha, Pub. P.G.Salve for Nehru Centre at Printwell Laxmi Mills, Estate Road, Bombay.

- San Carlos de La Rapita, Spain, July 1978: Overloaded 38 tonne truck with 1,518 Cu.Ft. of Combustible propylene gas slammed into a wall, killing 215 people. Flames leaped up to 100 Ft.

- Seveso, Italy, July 1976: An uncontrolled exothermic reaction in a reactor caused explosion, killing one lakh grazing cattle, affecting 4,450 acres.

- Cali, Columbia, August 1956: Seven trucks loaded with dynamite exploded in central Cali, killing 1,100, destroying 200 buildings and leaving a creater 85 Ft. deep.[7]

The Bhopal tragedy reminds all of us to be more vigilant while dealing with toxic chemicals. A full public and impartial investigation of the Bhopal and indeed any Chemical disaster is essential. Such an investigation is necessary to determine the causes of the accident and identify those responsible for causing it. This is necessary for purposes of compensating the victims, punishing the offenders and deterring and preventing future recurrences of the disaster.

The Government instituted a Judicial enquiry and investigation of the Bhopal disaster of 2-3 December 1984, was entrusted to the Central Bureau of Investigation (CBI).

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7. LEX ET JURIS : DOSSIER OF DISASTERS, March 1989, p.39.

The CBI team has submitted its investigation report. They found out that much of what Union Carbide had been claiming about the safety measures in the pesticide plant was not true. Since the safety norms in India are not as rigid as they are in USA, Indian plant though producing pesticides by the same process as that of Union Carbide's other MIC based pesticide plants located in West Virginia, USA did not follow the same safety rules. For instance, in West Virginia plant MIC is never stored beyond 15 days as storing of chemical for a long period of time is considered hazardous. Bhopal plant had stored one month MIC gas. The MIC in storage tank that played havoc with human life was produced on October 21 and 22, 1984 and was stored for use on or about 15th December 1984. The West Virginia plant has an electronically controlled four stage backup system to supplement the normal safety device, as is mandatory under the U.S. laws. The Indian plant has a one stage manual backup system. The investigators had also found out that although the safety rules stipulated that all the valves and the tubes used for storing and transfering the toxic gas and liquids should be inspected at least once every forth night. This was rarely done in Bhopal plant. There are positive indications that the gas escaped into the air not because the scrubbers failed to neutralise it as it was quashing out with tremendous force but because the scrubbers ceased to be of any use after the stock of caustic soda ran out.[8]

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8. Sunday: "Killer Gas Callous Carbide", by Tushar Pandit, 16-22 Dec. 1984, p.19.

The Government of India, in its published report, placed responsibility for the gas disaster of Bhopal, on a Combination of design flows, operating errors, defective system and managerial mistakes. The report had concluded that -

(i) For at least three days before the gas leak, plant technicians knew that some thing was wrong with tank 610, but nothing was done to find out what the technical problems were existed. Of the three MIC storage tank one was supposed to remain empty to contain escaping gas however the tank was full.

(ii) Union Carbide did not sufficiently advised the Government of the danger involved in producing MIC.

(iii) Emergency procedures were inadequate and initial response was slow.[9]

Much before the world's worst disaster, in 1982, the Union Carbide Corporation appointed a three members team, Mr.L.K. Kail, Mr.J.M. Poulson and Mr.C.S.Tyson and sent to Bhopal to look into the safety arrangement in the plant. The report heading "Operational safety Survey" was really alarming.

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9. The Hindustan Times, 29 March, 1985.

Following are few: points of report:

1. A number of factors make the MIC fead tank at serin a source of concern. They include manual control for filling of the tank with no instrumentation back-up, creator a possibilities of accidental overfilling.

2. The Flare seal pot liquid level gauge glass was found valved in. It was reported that the level alarm was also sometimes unrealiable loss of water seal in the pot could have been extremely serious.

3. The pressure gauge on the phosgene tank was out of order, showing no pressure even though tank was in service.

4. There was no fixed water spray system for fire protection or vapour cloud dispersal in the MIC operating area.

5. There was several conditions or operations in the Unit that presented serious potential or seizable release of toxic materials.

6. Filter cleaning operations are performed without slip blinding process lines leaking valves could creat serious exposure during this process.

7. Leaking valves reported by have been fairly common, compounding problem. A considerable number of valves were replaced in March 1982, but the problem still exists, though to a lesser degree. Team members observed one case in which MIC shut-off valve was leaking so severly that even evacuation of the line above the valve was not adequate to prevent MIC release when a blind flinge was removed. Valve leakage would appear to continue to be a situation that requires continuing attention and prompt correction[10]

The management of Union Carbide India Ltd. had served a notice on April 11, 1984 under the provisions of the Industrial Disputes Act 1948, to close its Bhopal Plant. According to Mr.V.P.Gokhale, Managing Director "After the unfortunate accident on the intervening night of December 2/3, 1984, on instructions received from the authorities of the State Govt., Union Carbide India Ltd. had closed its Bhopal plant operations. The licence under the factories Act, which expired on December 31, 1984, has not been renewed by the authorities. The management of the company had refrained from taking any precipitate action in regard to the closure of the plant because it was felt that alternatives to plant closure should be fully considered and

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10. 'Indian Express' : Bhopal Killer Plant, December 9, 1984 p.7.

explored. In complience with the State Govt. instructions, the factory has not been operating effective December 3, 1984, but the company has continued to pay full wages to all its workmen and had taken no further steps despite the press report to the effect that the company will not be allowed to restort its manufacturing operations at the Bhopal plant. During meetings with the Government authorities, it was made abundantly clear to us that permission to restart the factory will not be given. The position concerning the operation of the plant is now quite clear. Management sincerely regrets this most unfortunate development."[11] The management's three months notice for the closure of the plant as required under the Industrial Dispute Act, 1948, expired on July 10, 1985. Thus the plant was formally closed down on July 11, 1985.

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11. Sharma, A.M. 'Aspects of Labour Welfare and Social Security'; 'Bhopal Tragedy', 1985, p.323-324.

CHAPTER-II

LEGITIMACY OF SUIT IN UNITED STATES COURT

LEGITIMACY OF SUIT IN UNITED STATES COURT

An industrial disaster of unparallaled magnitude occured at the Union Carbide (India) Ltd. plant in Bhopal on the night of 2-3 December 1984. Due to release of deadly posionous gas, Methyle Isocyanate (MIC) used in preparation pf pesticides at the plant, about 2660 died and between 30,000 to 40,000 persons sustained serious injuries.[1] The disaster was also responsible for destroying other animal life and environment of the city, besides producing genetic effects of unknown magnitude on number of those who survived the holocaust.

The Bhopal disaster is one of the most egregious examples of a United states based multinational corporation injuring foreign victims. In view of vast number of claimants, The Govt. of India has passed a Bhopal Gas Leak Disaster Act 1985 under Section 3, of Bhopal Gas Leak Disaste: (Processing of claims) Act, 1985, the Union of India has been empowered full responsibility to represent and act on behalf of each and every claimant before any court or authority whether in India or outside India. The representatives of the injured and deceased had filed claims in several federal

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1. The Figures provided by the Govt. of India to the High Court of Madhya Pradesh.

district courts of the United States, which were consolidated for trial before judge John F. Keenan in the Southern District of New York.[2]

Justice Keenan afterward transferred the case to India under the doctrine of Forum non convenience.

The learned judge has raised many interesting issues regarding multinational liability in Federal Courts for mishaps in other parts of the world. Firstly, it is necessary at this stage to discuss the multidistrict litigation consolidation system used in Bhopal litigation.

This discussion will continue by criticising his "forum non conveniens" analysis, and will conclude by discussing the "minimal due process" conditions he imposed for transfer.

Multidistrict Consolidation

On 6 February 1985 a judicial panel on Multidistrict Consolidation 18 of the injury, death and property damage suits filed against Union Carbide Corporation in Federal Courts and assigned the litigation to judge Keenan of the

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2. Inre Union Carbide Corporation Gas Plant Disaster, 634 f. Supp.842 at 844 (S.D.N.Y.)

Southern district of New York.[3] This part will examine the structure and authority of the planel and illustrate these features as they were applied to the Bhopal litigation.

1. **General principles of transfer of civil actions.** section 1407 (a) to title 28 of the United States Code (1982) provides that civil actions pending in different districts and involving one or more common questions of fact "may be transferred to any district for coordinated or consolidated pretrial proceedings." Actions are consolidated after the panel[4] determines that "transfers for such proceedings will be for convenience of the parties and witnesses and will promote the just and efficient conduct of such action." The panel has cited the following factors in determining the appropriate transfer district,

i) the most central location;

i$) the numberof related actions pending in the district;

iii) the case load of the possible transferee court and probable duration of the case;

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3. In re Union carbide Corporation Gas Plant Disaster, 601 F. Supp. 1035 (J.P.M.P.L. 1985).

4. The penal consists of seven circuit and/or district judges (No. two of whom may be from the same circuit) as designate by Chief Justice of United States. Concurrence of four members is necessary for any action by panel (Section d 1407).

iv) the judge's experience with the particular litigation;

v) the preferable choice of the parties involved;

vi) the extent of pretrial activity in the district;

vii) the location of potential documents and witnesses[5]

2. Application of general principles to Bhopal litigation.

The transfer proceedings in the Bhopal litigation were intiated by the plaintiff of one west virginia action and one connecticut action to centralise the claims in the Southern District of West virginia, or alternatively in the Eastern District of New York. All of the responding parties agreed on the propriety of consolidation under section 1407.[6] In addition, the panel concluded that consolidation was necessary 'to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their council and the judiciary.

On the basis of papers filed and hearing, the panel has formulated the following observation: "Although none of seven forums suggested by the parties could be characterised

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5. Word Multidistrict litigation procedures in the United States, 1982, Trial Law Guide, 249-253.

6. United States Code, 1982.

as the nexus of this litigation involving a foreign disaster, on balance we are persuaded that the Southern District of New York is the appropriate transferee forum.'

The Analysis of Keenan's Forum non Conveniens

Prof. Upendra Baxi,[7] a noted Social activist commenting on justice Keenan views on forum nonconveniens said:

> "We also learn, ... (in Keenan's decision), that the much vaunted liberal ideology of Justice - a prized American cultural export, assiduously marketed to the third World Societies - does not include in its benign range the hopless victims of mass disasters, directly or indirectly, caused by American multinationals."

The greater part of Judge Keenan's decision is devoted to the issue of forum dismissal based on the doctrin of Forum non Conveniens. He purportedly followed Supreme Court doctrine and case law when he ruled that India and its people can and must vindicate their claims before independant and legitimate judiciary created there ....."[8] His decision is also implanted with a sense of Justice and devotion to the victims. In this discussion a brief out line

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7. In convenient forum and convenient catastrophe : The Bhopal case 1 (1986) (Indian Law Institute).
8. Supra note 2 at 867.

of the general principles behind the doctrine is as follows:-

1. General Principles :

The doctrine of forum non conceniens permits a court to decline jurisdiction, even though venue and jurisdiction are proper, on the theory that for the convenience of the litigants the action should be tried in another judicial forum.[9] It presupposes the availability of a more appropriate and convenient forum where the matter involved may be litigated. And although an American Defendent may not be subject to the jurisdiction of a foreign forum, a forum non conveniens dismissal motion may still be granted where the defendant submits to the jurisdiction of the foreign country for the resolution of the litigation.[10]

Should an adequate alternative forum exist? The court is required to subsequently inquire into the private interests of the litigants and public interests at stake.[11] The fundamental principle underlying this

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9. Dahlu United Technologies Corporation, 632, F. 2nd 1027 at 1029 (3d Cir 1980).

10. Schertenleib V. Traum, 589 F. 2d 1156 at 1164 (2d Cir. 1978); Alcoa Steamship Co. V. M/V. Nordic Regent, 654, F 2d 147 (2d Cir. 1980), Certiorari denied in 449 U.S.890.

11. Gulf Oil Corporation V. Gilbert, 330 U.S.501 at 508-09 (1947).

analysis is an "ultimate inquiry" into "whether the trial will best serve the convenience of the parties and the ends of justice.[12] Such an inquiry should "resist formulation" and look to the realities that make for doing justice." Thus dismissal is appropriate only when a plaintiff's selection of the forum is meant to "vex" "harass" or "oppress" the defendant. The exercise of the inherent power to dismiss by application of the doctrine is a matter for the sound discretion of the district court.[13] and it must be made by applying the particular facts of the case to the private and public interests involved.[14]

These are the general principles within which Justice Keenan, was confined in making his determination. He followed this general outline in his decision. However, he applied several principles in a manner which is inconsistent with the purpose and scope of case law in this area. The remainder of this section will disclose these inconsistencies.

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12. Koster V. Lumbermens Mutual Casualty Co., 330 U.S.518 (1947) (emphasis added); Fitzgerald V. Texaco, Inc., 521 F. 2d 448 at 450 (2d Cir. 1975), certiorari denied in 423m U.S. 1052 (1976).

13. Supra note 11 at 508.

14. Piper Aircraft Co. V. Reyno, 454 U.S. 235 at 257 (1982).

2. Keenan's initial determination:

Before examining the application of the general principles to the facts of the case in detail. Justice Keenan made several misguided preliminary conclusions regarding the application of the forum non conveniens doctrine and factual matters before the court. First he stated that the Gilbert pre-requisite of "at least two forums exist in which the defendant is amenable to process" was met.[15] He explained that Union Carbide Corporation had "unequivocally acknowledged that it (was) subject to the jurisdiction of the courts of India" and that, therefore, Union Carbide (was) definitely amenable to the process....."[16] But he later conditioned the judgement on the Union Carbide Corporation's agreement to be bound by the Indian Courts.[17] Thus, by Justice Keenan's own admission, "two forums to which the defendant was amenable" did not exist.

It is unlikely that the (SIC) Union Carbide had consented to submission to Indian courts. If it had there was no need to give it thirty days to confirm compliance with Indian jurisdiction. This inconsistency - acknowledging

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15. Supra note 2 at 846.

16. Id. at 847.

17. Id. at 867.

at the beginning of the judgement a catagorical and unequivocal submission by Union Carbide, and imposing submission condition at the end of the decision demonstrates the infirmities of Justice Keenan's whole approach to forum determination.[18]

Secondly, Justice Keenan extended the decision of Piper Aircraft Co. V. Reyno[19] to hold it directly applied to the Bhopal litigation based on the facts before the court.[20] But a close reading of the case indicates that his analysis is inappropriate. In Piper, a california - appointed administratrix, acting on behalf of Scottish citizens, brought negligence and strict liability actions against American manufacturers for the deaths of Scottish citizens in an air crash in Scotland. The aircraft had been manufactured by defendant piper in Pennsylvania and the propellers were made by defendant Hartzell in Ohio.[21] At the time of the crash, the aircraft was registered in Britain and owned and operated by British Companies. Plaintiffs candidly admitted that suit was brought against piper and Hartzell in the United States because its liability and damage laws were more favourable than those in Scotland.[22] The district court dismissed

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18. Supra note 7 at 15.
19. 454 U.S. 235 at 257 (1982).
20. Supra note 2 at 846.
21. Supra note 14 at 237.
22. The case was originally brought in colifornia, but was transferred to pennsylvania pursuant to Section 1404 of 28 United States Code.

the litigation on the doctrine of forum non conveniens, and the Supreme Court affirmed the decision by rejecting the claim that dismissal was barred whenever plaintiff could prove that the substantive law in the alternative forum was less favourable to the plaintiff.[23] Thus the decision in piper was focused on disallowing forum shopping based on unfavourable law relative to liability and damages.

In contrast, the Indian position in the Bhopal case was that the American legal system is collectively possessed of a superior organizational technology for assembling and integrating information, reaching decisions, and solving problems. Its claim was not based solely on substantive differences of law regarding liability and damages. Neverthless Justice Keenan concluded that "the out come of this analysis, given the rule of piper regarding change in law, seems self - evident."

The Justification for the decision in Piper further indicates that Justice Keenan's extension of the doctrine was inappropriate. As he noted, the driving force behind the court's decision in Piper was its perception that allowing access to the foreign plaintiffs would forster only some incremental deterrence."[24] But this consideration was absent in the Union of India's claim:

23. Supra note 14 at 250.
24. Supra note 14 at 260.

Reyno (Piper) was only one more products liability suit. But, of course, the Bhopal suits are very different matters. Bhopal is thought to be the greatest industrial disaster in history. Far from some "incremental deterrence", these suits touch on national policy concerns that arise in the face of a shock of some magnitude to our foreign trade relations.[25]

3. Thoughtless Preliminary Considerations :

As described earlier, the doctrine of forum non conveniens presupposes the availability of a more appropriate and convenient forum where the matter involved may be litigated. The burden of proving the existence of an adequate alternative forum rests on the defendant.[26] Analysing this issue Keenan has classified the discussion in the following topics:-

(1) Innovation in the Indian Judicial System;

(2) endemic delays in the Indian Legal system; and

(3) The procedural and practical capacity of Indian Courts.

Here we will examine his analysis in a similar shape.

First, he examined the question of innovativeness of the Indian Court system. He explained that "Palkhivala's

25. Weinberg, "Insights and Ironies: The American Bhopal case." 20 Tex. Int. L.J. 307 at 316-17.

26. Cheng V. Boeing Co., 708 F. 2d. 1406 at 1411 (9th Cir. 1983), Certiorari denied in 464 U.S. 1006.

numerous examples of noval treatment of complex legal issues by Indian judiciary." Indicated that India's judiciary was innovative.[27] He also stated that the plaintiffs' claim was "not compelling" because they presented "no evidence" to bolster their contention that "the Indian legal system has not emerged from its colonial heritage to display the innovativeness which the Bhopal litigation would demand.[28]

This analysis is flowed in that India's position was that the system still refelected its colonial origns, impeding on the role and direction of decisions,[29] not that the legal systems was uninnovative. The plaintiffs' breif in opposition to Union Carbide corporation's dismissal and Glanter's affidavit examined historical factors and conditions supporting their claim.[30] Justice Keenan's rejection of the plaintiffs' arguments, in the face of no contrary evidence on the precise issue, augered critics:

The Fetters of colonial heritage on innovative potential have been a subject matter of live discussion and analysis in official and non-official literature which

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27. Supra note 2 at 847.

28. Iol. at 848.

29. Upendra Baxi and Thomas Paul, Mass Disaster and Multinational liability: The Bhopal case 84-90 (1986).

30. Ibid.

the affidavit (submitted by Glanter) studiously cites and quotes and which is in no way, on this precise issue, rebulted by either (the) Dadachanji or Palkhiwala affidavits. To say the least, this terse dismissal of an important fact concerning the Indian legal system was the least expected.[31]

As described earlier, inability of the Indian Courts to properly adress the case is a central feature in distinguishing the Bhopal litigation from Piper. The "Fetters of colonial heritage" was an important aspect of this argument.

Secondly, Keenan adressed the problem of endamic delays in the Indian legal system. He began by describing the substantive and procedural reasons for the "considerable delays" encountered when litigating in the Indian system.[32] However, he countered that "United States Courts are subject to delays and backlog, too.[33] He argued that there was no reason to assume that Bhopal case would be treated in an "Ordinary fashion" by the Indian Judiciary and listed examples of methods used in special circumstances to expedite adjudication (including the Bhopal Act) to support his premise.

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31. Supra note 7 at 17-18.
32. Supra note 2 at 848.
33. Ibid.

Further, Keenan's analysis is inherently flowed. This section of the discussion was devoted to whether India is an adequate alternative forum or not, whether delays exist in the United States' system. All parties would probably agree that the American system is not "free" from delays and backlog. But relatively speaking, the system is much more efficient in dealing with such complex test litigation.

Finally, Keenan examined the procedural and practical capacity of Indian Courts to litigate the dispute. He extensively detailed the level of legal sophistication in Indian "lawyering skills", tost law and procedural devices and he concluded by quoting Palkhivala:

> "(w) hile it is true to say that the Indian system today is different in some respects from the American system, it is wholly untrue to say that it is deficient or inadequate."[34]

But evidence describing the system and case law doctrine indicated that some of the "differences" did render the Indian system "inadequate".

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34. Supra note 2 at 852.

As the plaintiffs' memorandum disclosed, procedural inadequacies in the pretrial procedures of an alternative forum have been held or grounds for dismissal of an American defendant's forum non conveniens motion. The plaintiff exposed a variety of procedural devices absent from the Indian system - the most important of which was the lack of pretrial device.[35] In Mocedo V. Boeing Co.,[36] the seventh circuit held that the lack of pretrial discovery procedures similar to those provided by the federal Rules of civil procedure was a sufficient basis for concluding that an alternative forum was inadequate in a forum non conveniens motion.[37] Keenan recognised the authority but sidestepped the issue by conditioning dismissal on Union Carbide Corporation's admission to abide by such procedures in India.[38] This created a problem because he had no similar authority to bind the Union of India to discovery compliance. Therefore, he stated that it would be fair to similarly bind the plaintiffs, and he later added the additional condition that "minimal due process" would have to be followed in the Indian forum if a resulting Judgement was to be enforceable in a United States Court. The obvious conclusion to be drawn is that an Indian Judgement would be unenforceable if India did not also comply with discovery.

35. Supra note 29 at 87-90.
36. 693 F.2d 685 (7th Cir. 1982).
37. Id. at 690.
38. Supra note 2 at 850.

On Appeal by Union Carbide Corporation the Court of Appeals recently held that the discovery condition on it was inappropriate unless the Union of India agreed to participate in reciprocal discovery.[39] Thus the latter has been coerced into complying with the American discovery procedure.

In addition, Keenan's analysis failed to examine the procedural and practical implications as a whole.

4. Keenan's Unique Balancing Act :

(i) **Private interests**:

Having determined the existence of an alternative forum, Keenan embarked on a journey through the Gilbert private/public interest analysis to determine the proper forum for litigation. This section will examine the first of these two components.

The Private interest component requires a balancing of all the considerations impacting upon the convenience of litigating the case in alternative forum. Keenan seperated his analysis into three topics - sources of proof,[40] access to witnesses[41] and the possibility of viewing the site of the disaster.[42]

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39. In re Union Carbide Corporation Gas Plant Disaster, 809 F 2d 195 at 205 (2nd Cir. 1987).
40. Supra note 2 at 853.
41. Supra note 2 at 859.
42. Supra note 2 at 860.

Keenan examining sources of proof argued that various records, reports, safety audits and personnel records were either located at the plant or seized by the Indian Govt.

Keenan then examined the availability of compulsory process for attendance of willing witnesses and the cost of obtaining attendance of unwilling witnesses. He observed that most of the witnesses of the questions in accusation and liability were in India, including engineers from Union Carbide India limited and subcontractors, of whom "there are hundreds", the managers of the seven operating units of its plant; employees from the MIC units; safety monitoring personnel; employees of the utilities and electrical departments; the 193 Indian employees on duty at the Bhopal plant "immediately prior or after the incident" and necessary officials from Madhya Pradesh Govt. Municipal Corporation of Bhopal and Union of India. Transportation and translation costs and service of process issues would significantly dicrease if a case involving these individuals was tried in India instead of United States. He determined that this factor weighed heavily toward adjudication in India.

(ii) Public Interests :

The Public interest component requires a balancing of all the considerations affecting the interests of nonparties to the litigation. Factors of the component include the problem of court congestion, fairness of imposing jury duty on a community with little relation to the litigation, the local interest in the controversy and the advantage of having the matter before a court familiar with the applicable law. Keenan examined these topics under three sub-topics, viz., administrative difficulties, the interests of India and the United States and the applicable law. This section will critique each of these sub-topics respectively.

First, Keenan noted that "multitude of witnesses and documents to be transported and translated" would create severe administrative problems to the court.[43] In addition, the analysis does not compare the administrative burden on the more highly congested system in India.

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43. Supra note 2 at 862.

Secondly, Keenan examined the American and Indian public interests in deciding the forum issue. He determined on the basis of piper that American interests were slight and the interests of India were great because Indian Govt. regulated the plant directly in the creation, operation, licencing and investment of the plant, and because the accident occured in Indian and most of the plaintiffs are Indian nationals.[44]

Keenan's analysis, however overlooked several important features of the plaintiffs claim.

Keenan's analysis of the Indian public interests was fair and thorough. But the overriding issue in a forum non conveniens motion is not whether some forum might be a good one, or even a better one than the forum chosen by a foreign plaintiff - the question to be answered" is whether plaintiff's chosen forum is itself inappropriate or unfair because of the various private and public interest considerations involved. Furthermore, nearly lost in his argument was the fact that India initiated the case in the American Courts to hold Union Carbide Corporation accountable at the highest standards for its role in the tragedy.

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45. Klaxon Co. V. Stentor Electric Manufacturing Co., 313 U.S.487 (1941)

Finally, Keenan concluded that Piper would require the court to apply Indian law and that test would be very burden some on the court. However, this holding is contrary to the New York state choice of law rules (which the court was obligated to apply)[45] and local case law which maintain that the laws of the jurisdiction where decisional misconduct occurs applies when conduct regulating rules are involved.[46] Thus the law of the State where the alleged decisional misconduct occured should apply, not the law of India.

As described, Justice Keenan presented a very one-sided analysis, giving the impression that the doctrine required dismissal. When both sides of the issue are closely examined, it appears that this holding was "yet another example of imperialism, another situation in which an established sovereign inflicted its rules, its standards and values on a developing nation."

"Minimal due Process" - Enforcement of a Possible Indian Judgement in the United States.

Justice Keenan dismissed the action against Union Carbide Corporation on the ground of forum non conveniens

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45. Klaxon Co. V. Stentor Electric Manufacturing Co., 313 U.S.487 (1941).

46. Long V. Pan Am World Airways, 16 N.Y. 2d 337 at 342-43 213 N.E. 2d 795 (1965); Schultz V. Boy Scouts of America Inc., 65 N.Y. 2d. 189; 480 N.E. 2d 679 at 683 (1985).

upon the conditions that it submits itself to the jurisdiction of the courts of India and to discovery under the model of the United States Federal Rules of procedure, and agree to satisfy any judgement rendered against it by an Indian Court where the judgement and affirmance "comport with minimal requirement of due process."[47] This part will examine the concern over the ambiguity of the "minimal due process" requirement imposed by the third condition, and the procedure an Indian Court have to follow to comply with the provisions.

How minimal of due process?

In domestic courts there is always the general requirement that the Govt. process be fair and impartial. Therefore, basically, there must be impartial and neutral decision making authority i.e., Judge hearing officer or agency. The United States Supreme Court held that "a fair trial in a fair tribunal is a basic requirement of the due process."[48] This requirement was certainly the Central theme behind Keenan's condition. But the exact standard he intended with the "minimal due process" condition was not defined in his opinion. (1) could Indian case law, decided after the accident but before trial, be

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47. Supra note 2 at 867.

48. In re Murchison, 349 U.S. 133 at 136 (1965)

applied without violating this provision? (2) could the Govt. create a special tribunal and remain within the helm of "minimal due process"? (3) What was the exact procedural burden placed on the Indian Courts? These questions open for further consideration.

Concern over this "minimal due process" provision had a substantial impact on the legal avenues followed by both parties after Keenan's decision. For example the Union of India decided to file its claim in Bhopal district Court, rather than set up a special tribunal, out of fear of doing anything out of the ordinary. Furthermore Union Carbide Corporation threatend to raise the issue in America if India retrospectively applied the "retribution without fault" rule of M.C.Mehta V. Union of India.[49]

Much of ambiguity of the "minimal due process" condition was diminished by the second circuit Court of Appeals in January 1987.[50]

In making its ruling the Court also examined Keenan's minimal due process condition, and attempted to eliminate much of the ambiguity which surrounded the concept. First it determined that it could not impose domestic due process requirements upon the Indian courts

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49. A.I.R. 1987, S.C. 965.

50. Supra Note 39.

"which are governed by their laws.[51] Secondly, it held that Keenan was in error to impose the "minimal due process" condition[52] and that judgement enforcement of an Indian Court decision governed by principles outlined in the New York Foreign Money judgements Law.[53] Thus much of the ambiguity generated by the "due process" condition was diminished.[54]

On the basis of above discussion, it may said that the district court of Bhopal was determined to be an adequate forum to file the case of compensation which was affirmed by the US Courts of Appeals. Therefore, on 5th September, 1986 the Union of India filed a suit for damages in the District Court of Bhopal, being regular suit.[55] On this suit, the District Judge of Bhopal Mr.M.W. Deo, on 17th December 1987 orderd UCC to pay Govt.of India an interim relief amounting to Rs.350 crores.

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51. Supra note 39 at 205.

52. Ibid.

53. 7 B N.Y. Civ. proc. L:S. R., SS. 5301-09 (Mckinney 1978)

54. Local Law governs actions brought in that state to enforce Judgements. See Island Territory of Curacao V. Solitron Devices Inc., 489. F. 2d. 1313 at 1318 (2d Cir. 1973); Certiorari denied in 416 U.S.986, stating that New York Law applies in such circumstances.

55. Suit No.1113/86.

CHAPTER-III

(A) SUPREME COURT AND LIABILITIES OF INDUSTRIES

(B) REACTIONS OF JUDGEMENT

SUPREME COURT AND LIABILITIES OF INDUSTRIES

In this chapter a modest attempt has been made to survey the Supreme Court decisions on the liabilities of hazardous industries. The attitude of the Supreme Court is not courageous. In most of the cases the Supreme Court has adopted the halfway line and protected the interest of the multimillion employers. But in some cases the Supreme Court has adopted a pragmatic approach such as in M.C, Mehta's case.[1]

In this case, there was leakage of oleum gas from one of the units of Shriram industry and as a result several persons were affected and it was alleged that one advocate practising in the court died. The leakage was from the caustic chlorine plant of Shriram industry. A writ petition was filed in the S.C. as Public interest litigation questioning the true scope of Articles 21 and 32 of the constitution for determining the liability of large enterprise and whether large enterprise be allowed to continue production in the thickly populated area. The constitution Bench of Supreme Court comprising C.J. P.N. Bhagwati and D.P. Madon and G.L.Ozajj considered a

1. M.C.Mehta and another, V. Union of India and other
   &
   Shriram Food and Fertilizer Industries and another
   V.
   Union of India and others, AIR, 1987 SC. 1086

question whether caustic soda plants be shifted to other place or Shriram Industries be permitted to restart the caustic chlorine plant? Then the management was permitted to re-start the caustic chlorine plants under strict conditions and precaution laid down by the Supreme Court.

Chief Justice Bhagavati delivered a Land Mark decision and observed that "when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. It is not possible to adopt a policy of not having any chemical or other hazardous industries merely because they pose hazard or risk to the community. If such a policy were adopted, it would mean the end of all progress and development. Such industries, even if hazardous have to be set up since they are essential for economic development and advancement of well-being of the people."[2] The Supreme Court further held that the interest of work men can not be ignored while deciding this delicate and complex issues.

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2. Supra AIR, 1987, SC 1086

During the course of judgment Chief Justice P.N. Bhagwati formulated the following directions:

(1) Operator should be personally liable for each safety devices or to measure and head of caustic Soda chlorine division should be made individually liable for efficient operation of safety devices. If on inspection at any time, defective safety measures are found, head of the plant and operator shall be liable.

(2) Employer D.C.M. shall be personally liable in the case of leakage resulting in death or injury to any workmen as people living in the vicinity and responsible to pay compensation.

(3) Chairman/Managing Director shall be personally liable to this effect.

(4) There shall be committee of 3 Lokhit Congress Union and 3 Karmchari Union to look after safety measure.

(5) Shriram Industires is ordered to re-start the plant as ordered above. If conditions are not complied with, Shriram Industries could not start the caustic Soda plants.[3]

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3. AIR, 1987, SC.965.

The Judges in this case, regarding liability of industries were of the view that:

> "It is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary ....., as part of the developmental programme. This rule, evolved in the 19th Century, at a time when all these developments of science and technology had not taken place, can not afford any guidence in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure ..... law has to grow in order to satisfy the needs of fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved to meet the challenge of such new situations..... we are certainly prepared to receive light from whatever source it comes, but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict liability in cases of hazardous or inherently

> dangerous activities or the rule laid down in Rylands V Fletcher[4] as developed in England recognises certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle of liability since the English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy there is no reason why we should hesitate to evolve such principle of liability merely because it has not been done so in England."[5]

Now this study relating to the liability of Industries will continue by examining the Bhopal gas leak disaster case in different courts of India.

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4. (1868), L.R.3, H.L. 330.
5. M.C.Mehta V. Union of India, AIR, 1987, SC.1086.

Proceedings before the District Court at Bhopal

On September 5, 1986, the Government of India filed the compensation suit against the Union Carbide Corporation of the United States making it liable for the Bhopal Gas leak disaster of 1984. The suit signed by Mr. Shyam Lal Ghosh, Joint Secretary in the Union Ministry of Chamicals, was filed in the Court of District and session Judge of Bhopal.

The suit was filed by the Union of India on behalf of all gas victims, under the power of attorney vested with it by the Bhopal Gas leak Disaster (processing of claims) Act, 1985. This followed the May 12, 1986 ruling of the U.S. federal Judge John Keenan, while reverting the compensation suit to an Indian Court. The Union Carbide was also directed by the American Court to submit all evidence required under Indian Law. The consent given by the Union Carbide accepting Judge Keenan's ruling was also filed in the Bhopal Court alongwith the main plaint. However, the amount of compensation was not specified in this suit. But it stated that the damages were due on two counts: firstly on deaths and secondly on physical injuries caused to the few thousand people who were exposed to toxic MIC gas in December, 1984. It also included damage done to property.

The plaint also claimed punitive damages against the Union Carbide for its negligence which led to the gas leakage from its pesticide plant in Bhopal. The plaint argued that the American multinational company had supplied the design of Bhopal plant, and had, therefore, constructive liability for the defects in the plant design which were responsible for the gas leakage.

The suit, which seems to have mainly relied on the findings of the Varadarajan Committee of Scientists - which had gone into the causes of the gas leak, added that adequate safety measures were not taken to avoid disaster. There were defects in the manufacturing process also, and all these factors showed that the UCC is liable for the 1984 gas tragedy.

The concluding part of the suit made the prayer for passing a decree for damages for such amount as may be appropriate to fully, fairly and adequately compensate all persons and authorities who suffered as a result of the 1984 disaster. The damages included the harm caused to environment - present and future. It also sought to recover the expenses incurred by the Government on providing relief to gas victims.

On the basis of above suit, the defendant UCC filed its written statement on 16th December, 1986 in which UCC-defendant took the position that it was its Indian counterpart the Union Carbide India Ltd. which owned the plant

and, therefore, the action should have been initiated against it and not against the defendant - UCC. This contention was not accepted by the Court on the ground that the defendant - UCC continued to have 50.9% of equity membership and control over its management.[1]

In the District Court, the issues were rather simple. The defendant - UCC admitted that there was escape of the gas from one of the storage tanks which had been responsible for causing death and disability to numerous persons.

On 4th September, 1987, the District court directed the parties to make efforts for a just and overall settlement. Since no proposal had been made in this regard, the court held on 18th November, 1987 that further hearings would take place in a time bound manner. It made suo moto proposals for grant of interim relief and hearing on this point was held on 8th December 1987.

On the basis of above points, the District Judge of Bhopal M.W.Deo passed an order on 17th December, 1987, directing the defendant - UCC (America) to deposit within 2 months a sum of Rs.350 crore in 'the court for relief

1. The letter of intent was granted to the Indian company on 13..3.1972. It entered into a foreign collaboration agreement with defendant - UCC, terms and conditions of which were approved by the Govt. of India on 25.8.73. In pursuance of this agreement the defendant -UCC assisted the Indian company to set up the plant and also provided training to the personal and technical staff of the company.

of gas victims[2] as interim payment. Mr. Deo suggested that the interim relief could be something like Rs.2 lakh each in case of death, Rs.1 lakh in case of total disablement to earn livelihood and lesser amounts for the less injured. All the same, he added, these were matters within the jurisdiction of gas relief commissioner.

Madhya Pradesh High Court And Union Carbide case

The defendant - Union Carbide Corporation filed an appeal in the Madhya Pradesh High Court against the order of District Judge M.W.Deo, of Bhopal of 17th Dec. 1987. It was asserted that the District Judge had no jurisdiction to grant intrim relief. Furthermore the defendant considered the inability of plaintiff to give full particulars of persons for whom action was brought, the nature and extent of loss suffered by each of such persons and quantum of damage claimed in respect of each of them, as fatal.[3]

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2. In the court of Mr.Justice P.D.Muley of Madhya Pradesh High Court, who has been appointed commissioner for payment of compensation to the gas victims.
3. The High Court found that District Court had erred in founding its jurisdiction on sections 94 and 151 of the civil procedure code. The Attorney General relied upon Bhandawa Mukti Morcha V/S. Union of India, AIR 1984 SC.802, Sebstian M.Hongray V/S Union of India, AIR 1987 SC.571 and 1026, Bhim Singh V/S Jammu and Kashmir 1985 (4) SCC.677; PUDR V/S State of Bihar 1987 SC.355 and M.C.Mehta V/S Union of India (4) SCC.463.

The High Court in its order dated 4.4.1988 identified the rule applicable to the Bhopal Gas leak disaster as the one which Supreme Court had developed in M.C.Mehta V. Union of India.[4] According to the Madhya Pradesh High Court Judge's observation the facts and circumstances in two cases were similar. In each of these cases, there was an escape of dangerous chamicals. Consequently, the principles of absolute liability without exception laid down in M.C.Mehta's case applied more vigorously to the Bhopal suit. The court in that case had said "We are of the view that an enterprise which is engaged in the hazardous or inherently dangerous industry which has a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken". Furthermore, the court also approved the incorporation of statutory rules of English law brought into force much before the Bhopal disaster by stating that there was no reason why these rules "could not be adopted with suitable modifications as a part of Indian common law and applied to the Bhopal suit.[5]

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4. AIR 1987, SC.965 and 1086.

5. Union Carbide Corporation USA V. Union of India, Civil Revision No.26 of 1988.

Before directing payment of interim relief, the High Court said that it was satisfied that (a) the defendants against whom order is sought has admitted liability for plaintiff's damage (b) that plaintiff has detained judgement against the defendants for damages to be assessed and (c) that if the action proceeded to trial the plaintiff would obtain judgement for substantial damages aginst the defendant.[6]

The High Court found that the District Court in error in leaving the question relating to quantum of compensation to be determined by the commission functioning under the Bhopal Act and the scheme framed thereunder. The court accepted the figures furnished by plaintiff Govt. of India in its amended plaint - 2660 persons who suffered, agonising and excruciating death and 30,000 to 40,000 persons who sustained serious injuries, and thereafter proceeded to determine the measure of damges in respect of 4 catagories of victims identified by it if the suit had proceeded to trial as under:

(a) death cases: Rs.2 lakhs each.

(b) Total disablement resulting in permanent disability cases: Rs.2 lakhs each.

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6. The Court ruled that no order of intrim payment of damages should be made unless the defendant is not a person falling within one of the following categories (a) a person who is in sured in respect of plaintiff' claim (b) a public authority or (c) a person whose means and resources are such as to enable him to make the interim payment. Since the defendant Union Carbide Corporation had stated on affidavit that it had means and resources to make payment and was insured to the extent of Rs.262/- crores. This condition also fulfilled.

(c) Permanent partial disability cases: 1 lakh each.

(d) Temporary partial disability cases: Rs.50,000 each.

The court further observed that the measures of damages payable by the alleged tort feaser has to be correlated to the magnitude and capacity of the enterprise because such a compensation must have deterrent effect.[7]

As to the interim compensation payable it suggested that half the amount as mentioned above in respect of each of four categories would constitute reasonable amount payable as interim relief. On the basis of these considerations the court fixed the interim compensation at Rs.250/- crores thus reducing the amount awarded by District Court of Bhopal by Rs.100/- crores.

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7. The court found that defendant UCC was a financially sound corporation having more than US $ 6.5 million (i.e. Rs.8515 crores) worth of unencumbeered assets.

SUPREME COURT AND UNION CARBIDE CASE

It is unnecessary for the present purpose to refer, in any detail, to the somewhat meandering course of the legal proceedings for the recovery of compensation initiated against the multinational company initially in the courts in the United States of America and later in the District court of Bhopal in suit No.1113 of 1986. It would suffice to refer to the order dated 4 April, 1988 of the High Court of Madhya Pradesh which, in modification of the interlocutory-order dated 17 December 1987 made by the learned District Judge, granted an interim compensation of Rs.250/- crores. Both the Union of India for enhancement of interim compensation and Union Carbide Corporation for maintainability of an order for payment of interim compensation appealed against that order.[1]

This court by its order dated 14th February, 1989 made in those appeals directed that there be an overall settlement of the claims in the suit, for 470 million U.S. Dollars and termination of all civil and criminal proceedings.[2]

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1. Union Carbide Corporation V. Union of India, Jana Swasthya Kendra, Bhopal, M.P. Zahreeli Gas Kand Sangharsh Morcha, Bhopal Civil appeal Nos.3187-88 with Special leave petition (civil) No.13080 of 1988, Judgement today 1989, SC.296 and 337.

2. Emphasis supplied in supra, 1989,(2), SC.454.

The opening words of the order said:

> "Having given our careful consideration for these several days to the facts and circumstances of the case placed before us by the parties in these proceedings, including the pleadings of the parties, the mass of data placed before us, the material relating to the proceedings in the courts in the United States of America, the offers and counter-offers made between the parties at different stages during the various proceedings, as well as the complex issues of law and fact raised before us and the submissions made thereon, and in particular the enormity of human suffering occasioned by the Bhopal Gas disaster and the pressing urgency to provide immediate and substantial relief to victims of the disaster, we are of opinion that the case is pre-eminently fit for an overall settlement between the parties covering all litigations, claims, rights and liabilities related to andarising out of the disaster....."[3]

The basic consideration motivating the conclusion of the settlement was the compelling need for urgent relief. And the response of learned counsel on both sides was also positive in attempting a settlement. The court asked learned counsel to make available the particulars

3. Emphasis supplied on supra S.C. p.457-458.

of offers and counter offers made on previous occasions for a mutual settlement. Both parties furnished particulars of the earlier offers made for an overall settlement. Shri Nariman (counsel for UCC) stated that his client would stand by its earlier offer of 350 million U.S. dollars and also submitted that his client had also offered to add appropriate interest, at the rates prevailing in the U.S.A., to the sum of 350 million U.S. dollars which raised the figure to 426 million U.S. dollars. In regard to this offer of 426 million U.S. dollars, the learned Attorny General[4] submitted that any sum of less than 500 million U.S. dollars would not be reasonable.

In the above circumstances, the court examined the prima-facie material as to the basis of quantification of a sum which, having regard to all circumstances including the prospect of delays inherent in the judicial process in India and thereafter in the matter of domestication of the decree in the United states for the purpose of execution and directed Union Carbide Corporation, U.S.A. to pay 470 million U.S. dollars to the Union of India in full settlement of all claims, rights and liabilities related to and arising out of the Bhopal Gas disaster, on or before 31 March, 1989.[5] It was also said by this court that "all civil proceedings related to and arising out of the Bhopal Gas disaster shall hereby stand & transferred to this court and shall stand concluded in-

4. Mr.K.Parasaran - Attorny General of India(as then he was)

terms of the settlement, and all criminal proceedings related to and arising out of the disaster shall stand quashed wherever they may be pending."[6] The court said in this regard that "a memorandum of settlement shall be filed before us tomorrow setting forth all the details of the settlement to enable consequential directions, if any, to issue."[7]

The Supreme Court making further order on dated 15th February, 1989 said in the following words -

> "Having heared learned counsel for the parties, and having taken into account the written memorandum filed by them, we make the following order further to our dated 15th February 1989 which shall be read with and subject to this order:
>
> 1. Union carbide India Ltd, which is already a party in numerous suits filed in the district court at Bhopal and which have been stayed by an order dated 31 December, 1985 of the District court, Bhopal, is joined as a necessary party in order to effectuate the terms and conditions of our dated 14 February, 1989 as supplemented by this order.

6. Supra note 1, 1989, SC 296.
7. Supra note 1, 1989, SC 296.

2. Pursuant to the order passed on 14 February 1989 the payment of the sum of US $ 470 millions directed by the court to be paid on or before 31 March 1989 will be made in manner following:-

(a) A sum of U.S. $ 425 millions shall be paid on or before 23 March, 1989 by Union Carbide corporation to the Union of India, less U.S. $ 5 millions already paid to the order dated 7 June, 1985 of judge Keenan in the Court proceedings taken in the United State of America.

(b) Union Carbide India Ltd. will pay on or before 23 march, 1989 to the Union of India the rupee equivalent of U.S. $ 45 millions at the exchange rate prevailing at the date of payment.

(c) The aforesaid payments shall be made to the Union of India as claiment and for the benefit of all victims of the Bhopal Gas Disaster under the Bhopal Gas leak Disaster (Registration and processing of claims), Scheme, 1985 and not fines, penalties, or punitive damages."[8]

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8. Supra-note 1, 1989, SC 337

The Supreme Court making directions said that the undertaking given by Union Carbide Corporation pursuant to the order dated 30 November, 1986 in the District Court, Bhopal shall stand discharged and all orders passed in suit No.1113 of 1986/or in revision therefrom shall also stand discharged. Any action for contempt initiated against counsel or parties relating to this court and arising out of proceedings in the courts below shall be treated as dropped.

The Supreme Court making directions also said that the amounts payable to the Union of India under these orders of the court shall be deposited to the credit of the Registrar of this court in a Bank under directions to be taken from this court. This order will be sufficient authority for the Registrar of the Supreme Court to have the amount transferred to his credit.

REACTIONS ON JUDGEMENT

A four year old legal battle for compensation to the victims of the Bhopal gas disaster tragedy has been suddenly brought to an end.

The Supreme Court ordered the Union Carbide on February 14, 1989 to pay $ 470 million (approximately Rs.705 crores) on or before March 31, 1989 in "full and final settlement" of all claims, rights and liabilities arising out of tragedy.[1] Both the parties accepted this settlement order of the Supreme Court. It has a mixed reaction. The Union Carbide Corporation reacting to the court's order said "we agree with the court's assessment that it is a fair and reasonable settlement."[2]

Immediately after the orders were passed there have been sharp reactions ranging from reasoned criticism to out right condemnation from individuals, public spririted organisations, Jurists and Former Judges of the Supreme Court. Further, for the convenience of the present study the mixed reaction of the public classified

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1. Union Carbide Corporation Vs. Union of India, Judgements today 1989, SC.296.

2. The Times of India, New Delhi, dated 15th Feb. 1989.

into following catagories:

(1) Both the parties Reactions

(2) Intellectual's Reaction

(3) Political Reaction

(4) Reactions of different organisations.

1. Both the parties Reactions :

In Union Carbide case there were two parties. One party of the case was Union Carbide Corporation of United States, another party consisted of Union of India and two other organisations i.e., Jana Swasthya Kendra, Bhopal, M.P. and Zahreeli Gas Kand Sangharsh Morcha, Bhopal.

(a) Union Carbide Corporation's (USA) Reaction

The Union Carbide Corporation's counsel, Mr.F.S.Nariman described the Supreme Court's decision in the Bhopal gas disaster case as "fair and reasonable". Reacting to the court's order that it should pay $ 470 million as compensation for the victims of the gas leak, he said, "we agree with the court's assessment that it is fair and reasonable settlement".[3] Mr.Nariman

3. Supra, dated 15th Feb. 1989

further said, that "Our primary interest is in resolving this matter as promptly as possible so that further resources can flow to the victims of Bhopal."

(b) Reaction of Union of India :

Mr.K.Parasaran, Attorney General commenting on the settlement, said that the settlement in Carbide case made by Supreme Court is "fair and reasonable."[4] The Government of India explains the following rationale behind the settlement of $ 470 million (Rs.705 core):

(i) The Madhya Pradesh High Court assessed that if the case went to final judgement, the following would be the scale of compensation:[5]

Death	Rs.2 lakh
total permanent disability	Rs.2 lakh
Partial permanent disability	Rs.1 lakh
temporary partial disability	Rs.50,000

As interim compensation, the High Court awarded Rs.250 crore as being 50 percent of total damages of Rs.500 crore that would

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4. The Times of India dated 15 Feb. 1989, page.1
5. Emphasis supplied in Union Carbide Corporation Vs. Union of India. Judgement today, 1989(2) SC.454.

become due based on these scales of compensation. The Supreme Court using these figures as a basis, has raised the compensation to Rs.705 crore, building in enough margin to take care of other claims.

(ii) The Government accepted the figure of $ 470 million because this was an order of the highest court of the country which is ultimately the supreme judicial authority.

(iii) For reasons supporting the settlement is that a number of legal hurdles had to be crossed before fixing the liability on the parent company in America. It and its Indian subsidiary are seperate legal entities. The Indian subsidiary is not in law the agent or servant of the parent company. The principle of vicarious liability - the liability of the master for the wrong committed by his servant in the course of the latter's employment - could not be applied in this case.

(iv) Other reason for supporting the settlement was that the Supreme Court considered that it was better to get a "just, equitable and reasonable" compensation now rather than subject the victims to an indefinite wait which may 15 to 25 years

more for an ultimate decision. It is true that the Judicial delay defeats Justice. It is clear that the present settlement has curtailed the judicial delayed.

(c) **Reaction of adjoining party of Union of India** :

The Convener of the Zahereeli Gas Kand Sangharsh Morcha, Bhopal has aptly underscored, the Rs.705 crore compensation amount would not be adequate to rehabilitate the gas victims, as it would, on disbursement, come to less than Rs.5000/- for the survivors after payment of compensation to families of those who died in the disaster.[6]

2. **Intellectual's Reaction** :

After the settlement order of the Supreme Court to pay $ 470 million to Union of India by Union Carbide Corporation, there are many intellectuals who supported the judgement and many others who did not support this order. They are classified into two categories:-

(i) Arguments in favour of the court's order.
(ii) Arguments against the Court's order.

(i) **Arguments in favour of the court's order** :

Mr.Justice M.N.Venkatachaliah, one of the Judges on the constitution Bench, recently claimed

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6. Surrender to Multination : Mainstream Feb.18,1989.

that "if the record of the case was seen, the public would conclude that the settlement was the best possible under the circumstances.[7]

The Attorney - General of India, Mr.K.Parasaran, supporting the order of the Supreme Court, said that "it is a fair and reasonable settlement."

The great Jurist, Mr.Nani Palkiwala is commenting that "it is a very sensible decision and it is eminently in the interest of India."[8]

The former Chairman of the Bar Council of Delhi, Mr. Lalit Bhasin said the "protest voices" against the order were "politically motivated". Mr. Bhosin "strongly favouring" the settlement between UCC and Union of India, said that "it would have taken several years in getting a final verdict in the UCC case in "view of notorious" legal delays.

(ii) <u>Arguments against the court's order</u> :

There are many jurists who do not support the Supreme Court's settlement order of $ 470 million. They have the rationale behind it and said that the settlement is a sell out of the victims. Some of

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7. Lax Et Juris; March, 1989, page 32.
8. Mainstream, No.31, April 29, 1989, page.6

them are reported here as follows:

- Mr.P.N.Bhagwati, Former Chief Justice of India, has called this judgement as "travesty of Justice". He says "the Supreme Court has lost the opportunity of advancing human rights jurisprudence from the third world view point and failed to meet the expectation of the people of India - the constituency of the court."[9]

- Mr.Justice Sabyasachi Mukherji, heading the five-judge bench hearing the constitutionality of the Bhopal gas disaster (processing of claims) Act, 1985, under which another five judge bench has ordered the US $ 470 million settlement has made a comment that "If the parties are not associated then the settlement will be bad under sections[10] 3 and 4 of the Act itself."[11]

- The Supreme Court Bar Association by a majority vote decided to intervene in the ongoing court proceedings challenging the February 14 $ 470 million-dollar settlement between the multinational

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9. India today, 1-15 March 1989.

10. Section 3 of Bhopal Gas leak disaster (processing of claims) Act, 1985 gives the Union Government the exclusive right to represent and act for the victims. This is subject to section 4 which requires the Union government to pay due regard to matters which a victims may like to be urged for his claim and to associate the victims' legal counsel with the union government in relation to his claim if the victim so desires.

11. Hindustan Times, New Delhi, dated 10th March, 1989.

Union Carbide Corporation and the Indian government. Mr.A.K.Sen a noted Supreme Court lawyer and the President of Supreme Court Bar Association presiding over the meeting passed a resolution urging the constitution bench headed by the Chief Justice, Mr.R.S.Pathak (then was), to reconsider the court's approval to the settlement.

- Dr.Upendra Baxi considers[12] the supreme court "award" as calamitous as the Bhopal gas leak itself. He added that in oleum leakage gas case[13] of old Delhi, the Supreme Court, without much delay, proclaimed the magnificent principle of absolute liability of hazardous industry. But in 1989, in Bhopal settlement, the Supreme Court completely ignored that binding principle. It thus creates one regime of liability for Indian capital and none for the multinationals!

- Many intellectuals consider while reacting on settlement that the court had no jurisdiction to extinguish claims and causes of action within or out side India of Indian citizens, more so criminal proceedings which "stand quashed and accused deemed to be acquitted" They further considered that the trial court and not the supreme court was the proper forum for determining the measure or quantum of damages.

12. Revictimising Bhopal victims : Upendra Baxi, Mainstream March 4, 1989, page.5.
13. M.C.Mehta Vs. Union of India, AIR, 1987, SC.1086.

3. **Political Reactions** :

Various political party leaders has strongly criticized the Supreme Court order of $ 470 million in Union Carbide case. However few of them supported the settlement order.

The Madhya Pradesh Former Chief Minister, Mr.Moti Lal Vora, supporting the court settlement order said, that "it is reasonable and if the legal proceedings goes for a long period then the victims of gas tragedy obtain only sufferings."[14]

Prof.K.M.Chandy, Former Governor of Madhya Pradesh said that "it was a matter of great satisfaction that the Supreme Court had delivered Judgement on the cases pertaining to the Bhopal gas tragedy and now the goverment would make all-out efforts to see that the measures of rehabilition were continued relentlessly."[15]

The Former Union Industry Minister, Mr.J.Vengala Rao defended government's assertion in Rajya Sabha that the compensation of $ 470 million for the Bhopal gas tragedy was "just, equitable and reasonable". He also assured the Rajya Sabha that the compensation awarded by Supreme Court would be disbursed impartially, speedily and affectively."[16]

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14. A statement in Jan Satta (Hindi) dated 21 Feb.1989.
15. Hindustan Times: dated 9 March, 1989.
16. A news in The Times of India, dated 24th Feb. 1989

Opposition in both Houses of parliament assailed the Supreme Court order on payment of compensation in the Bhopal gas tragedy case as a betrayal of the interests of the lakhs of victims and complete surrender to multinational Union Carbide.

The Bhartiya Janata Party leader, Mr.Atal Bihari Vajpayee called for a review of the verdictwhile, Prof. Madhu Dandavate of Janata Dal, went a step ahead in threatening to launch a compaign for the reversal of the order.

Mr. George Fernandes, General Secretary of the Janata Dal, criticised the settlement order and demanded the resignation of Chief Justice, his co-judges and attorney general as also of the Union law minister.[17]

Over 50 members of parliament from different opposition parties appealed to the Govt. to withdraw the settlement arrived at in the Bhopal gas disaster case and seek a review of the Supreme Court Judgement through a review petition.

Regarding the terms of settlement, the opposition MPs said that they were "shocked and distressed by the complete waiver of Union Carbide's liability for the

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17. A news in Times of India, dated 21 Feb. 1989

disaster, both civil and criminal, they said that the failure to establish any deterrent to industrial malpractice is detrimental both to the interests of the people of this country and to our judicial system."[18]

The Bhartiya Janata Party leader, Mr.Atal Bihari Vajpayee alongwith 5000 party workers were arrested in Bhopal while defying the prohibitory orders imposed around the Madhya Pradesh Vidhan Sabha, as they were protesting against the settlement with the Union Carbide.[19]

4. Reactions of different organisations ;

Thousands of victims of Bhopal Gas disaster and their supporters which comprised mainly of left organisations, i.e., Indian national trade Union Congress, Student Federation of India, as well as Students' from Jawahar Lal Nehru University, Delhi University, tookout a rally to Boat Club, demanding a review of Supreme Court Judgement of US $ 470 million compensation to the survivors of the gas leak.[20]

The members of "Bhopal gas peedit Mahila Udyog Sangathan" with the convener, Mr.Jabbar Khan, staged a "dharna" out side the supreme Court demanding to

18. MPs want Bhopal verdict reviewed: Hindustan Times dated 5, March (1989).
19. Vajpayee & 5000 others court arrest : Hindustan Times dated 10 March 1989.
20. Gas victims demand review of SC verdict: Times of India, dated 23rd Feb. 1989.

review of Supreme Court order of US $ 470 million compensation to the victims of Bhopal Gas. The "Janawadi Mahila Samiti" also supported in staging the 'dharna' out side Supreme Court.[21]

The "Hind Mazdoor Kissan Panchayat" organisation, presiding by Mr.George Fernades, decided to burn copies of judgement before the Supreme Court on February 27, 1989.[22]

In the light of the above discussion, the settlement order of the Supreme Court of US $ 470 million compensation was not adequate but a sellout of the victims. And it should be received by a larger constituional bench of the Supreme Court. There is no doubt that the gas victims are in urgent need of compensation for rehabilitation but it does not mean that they can be paid a meagre amount as compensation.

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21. Janasatta, dated 22 February 1989.

22. Janasatta, dated 21 February 1989.

CHAPTER-IV

THE BHOPAL GAS LEAK DISASTER (PROCESSING OF CLAIMS) ACT, 1985 & A CRITICAL APPRISAL

THE BHOPAL GAS LEAK DISASTER (PROCESSING OF CLAIMS ACT, 1985

Statement of objects and Reasons :

The Gas leak disaster involving the release, on 2nd and 3rd December, 1984, of highly noxious and abnormally dangerous gas from a plant in Bhopal of the Union Carbide (India) Ltd., a subsidiary of the Union Carbide Corporation, U.S.A., is of an unprecedented nature both from the point of view of its nature and its effects. It resulted in loss of life and damage to property on an extensive scale. Victims of the disaster who have managed to survive are still suffering from adverse effects and the further complications which may arise in their cases in course of time can not be fully visualised even at this stage. The Central Government and the Government of Madhya Pradesh and various agencies had incure expenditure on a large scale for containing the disaster and mitigating or otherwise coping with the effects of the disaster.

Government has been anxious to ensure that the interests of the victims of the disaster are fully protected and that the claims for compensation or damages for loss of life or personal injuries or inrespect of

other matters arising out of or connected with the disaster are processed speedily, effectively, equitably and to the best advantage of the claimants. The legal position was examined carefully with reference to the laws obtaining in the United States of America and in our country and in the light of the examination it was felt that special provisions should be made for processing the claims. Accordingly, the president promulgated on the 20th February, 1985, The Bhopal Gas leak Disaster (processing of claims) Ordinance, 1985,[1] to confer powers on the Central Government to represent the claimants and take all necessary steps for the processing of the claims. The ordinance also provided for the appointment of a Commissioner for the Welfare of the victims of the disaster and for the formulation of a scheme to provide for various matters necessary for processing of the claims and for the utilisation by way of disbursal or otherwise of amounts received in satisfaction of the claims.

The Bill seeks to replace the aforesaid ordinance.

Various provisions of Bhopal Gas leak Disaster (Processing of claims) Act, 1985.

The Act shall be deemed to have come into force on the 20th day of February, 1985. It has been provided in

1. This ordinance became the Act when after enacting it by parliament and when received the assest of President on March 29, 1985.

section 1 of the said Act.

Section 2 of the Bhopal Gas leak Disaster (Processing of claims) Act, 1985 gives some definitions. These definitions are given as follows in this Act, unless the context otherwise requires :

(a) "Bhopal gas leak disaster" or "disaster" means the occurance on the 2nd and 3rd days of December, 1984, which involved the release of highly noxious and abnormally dangerous gas from a plant in Bhopal (being a plant of the Union Carbide India Limited, a subsidiary of the Union Carbide Corporation, U.S.A.) and which resulted in loss of life and damage to property on an extensive scale;

(b) "Claim" means:-

(i) a claim, arising out of, or connected with, the disaster, for compensation or damages for any loss of life or personal injury which has been, or is likely to be, suffered;

(ii) a claim, arising out of, or connected with the disaster, for any damage to property which has been or likely to be, sustained;

(iii) a claim for expenses incurred or required to be incurred for containing the disaster or mitigating or otherwise coping with the effects of the disaster;

(iv) any other claim (including any claim by way of loss of business or employment) arising out of, or connected with, the disaster;

(c) "claimant" means a person entitled to make a claim;

(d) "Commissioner" means the commissioner appointed under section 6;

(e) "person" includes the Government;

(f) "Scheme" means a scheme framed under section 9.

Explanation :- For the purpose of clauses (b) and (c), where the death of a person has taken place as a result of the disaster, the claim for compensation or damages for the death of such person shall be for the benefit of the spouse, children (including a child in the womb) and other heirs of the deceased and they shall be deemed to be the claimants in respect thereof.

The power of Central Government to represent claimants are dealt with section 3 of the Bhopal Gas leak disaster (processing of claims) Act, 1985. Which are as follows:-

(1) The Central Government, subject to the other provisions of this Act, shall, and shall have the exclusive right to, represent, and act in place of (whether within or out side India) every person who made, or is entitled to make, a claim for all purposes connected with such claim in the same manner and to the same effect as such person.

(2) In particular and without prejudice to the generality of the provisions of sub-section(1), the purposes reffered to therein include:-

(a) Institution of any suit or other proceeding in or before any court or other authority (whether within or out side India) or withdrawal of any such suit or other proceeding, and

(3) The provision of sub-section shall apply also in relation to claims in respect of which suits or other proceedings have been instituted in or before

any court or other authority (whether within or out side India) before Commencement of this Act.

Provided that in the case of any suit or other proceeding with respect to any claim pending immediately before the commencement of this Act in or before any court or other authority out side India, the Central Government shall represent, and act in place of, or alongwith, such claimant, if such court or other authority so permits.

Section 4 of Bhopal Gas Leak Disaster (processing of claims) Act, 1985 provides claimants right to be represented by a legal practitioner. In this regard it is said that, notwithstanding anything contained in section 3, in representing and acting in place of, any person in relation to any claim, the Central Government shall have due regard to any matters which such person may require to be urged with respect to his claim and shall, if such person so desires, permit at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim.

Under section 5 of the Bhopal Gas leak disaster (processing of claims) Act, 1985,

(1) the Central Government, for the purpose of discharging its functions, shall have the powers of a civil court while trying a suit under the code of civil procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which the central government may, by notification in the official gazette, specify.

(2) Every notification made under clause (f) of sub-section (1) shall be laid, as soon as may be after it is made, before each House of parliament, while

it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Under section 6, of Bhopal Gas leak Disaster (processing of claims) Act, 1985 the Central Govt. has been authorised by which, it may appoint an officer, to be known as the commissioner for the welfare of the victims of the Bhopal gas tragedy and such other officers and employees to assist him as the government may deem fit. The commissioner shall discharge such functions as may be assigned to him by the scheme. It is also provided that the commissioner and officers sub-ordinate to him, may be authorised by the Central Government to

exercise all or any of the powers which the central government may exercise under section 5 besides this, it is also said, in this section, that all officers and authorities of the government shall act in aid of the commissioner.

Section 7 of this Act provides that, the Central Government may, by notification in the official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, all or any of its powers under this Act (excepting the power under section 9 to frame a scheme) to the Government of Madhya Pradesh or an officer of the Central Government not below the rank of a joint-secretary to that government or an officer of the government of Madhya Pradesh not below the rank of a Secretary to that Government.

On the question of delegation of power the Supreme Court in certain cases[2] held that where after laying down the legislative policy the executive authority is given power to work out the policy, there is no unconstitutional delegation of power. The Supreme Court further held that where the provisions of the challenged Act clearly lay down the policy to be followed by the executive, what is

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2. State of Bihar V. Kameshwar Singh, AIR, 1952, SC.252
Gopalan V. State of Madras, 1950, SCJ 174.
Swadeshi Cotton Mills V. State of Ind. trib., AIR 1961 SC.1381.

left to the executive is to set up a machinery to implement the legislative policy. There is no delegation of essential legislative power in such cases.

Section 8 of this Act says about limitation in the following words:

(1) In computing, under the limitation Act, 1963 (36 of 1963), or any other law for the time being inforce, the period of limitation for the purpose of instituting a suit or other proceeding for the enforcement of a claim, any period after the date on which such claim is registered under and in accordance with, the provisions of the scheme shall be excluded.

(2) Nothing in sub-section (1) shall apply to any proceedings by way of appeal.

The power of Central Government to frame a scheme has been defined under section 9 of this Act. In this regard it is said, that, the central government shall, for carrying into effect the purposes of this Act, frame by notification in the official Gazette a scheme as soon as may be after the commencement of this Act. A scheme may provide for all or any of the following matters namely:

(a) the registration of the claims under the scheme and all matters connected with such registration;

(b) the processing of the claims for securing their enforcement and matters connected therewith;

(c) the maintenance of records and registers in respect of the claims;

(d) the creation of fund for meeting expenses in connection with the administration of the scheme and of the provisions of this Act;

(e) the amounts which the central government may, after due appropriation made by parliament by law in that behalf, credit to the fund referred to in clause (d) and any other amounts which may be credited to such fund;

(f) the utilisation, by way of disbursal (including apportionment) or otherwise, of any amounts received in satisfaction of the claims;

(g) the officer (being a judicial officer of a rank not lower than that of a District Judge) who may make such disbursal or apportionment in the event of a dispute;

(h) the maintenance and audit of accounts with respect to the amounts referred to in clauses(e) and (f);

(i) the functions of the commissioner and other officers and employees appointed under section 6.

Further this section provides that, every scheme framed under this Act shall be laid, as soon as may be after it is framed, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be framed, the scheme shall thereafter have effect only in such modified form or be of no effect as the case may be so; however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme.

The provisions of Removal of doubts have been made under section 10 of the Bhopal Gas leak disaster(processing of claims) Act, 1985. For the removal of doubts, it is hereby declared that:-

(a) any sum paid by the Government to a claimant otherwise than by way of disbursal of the compensation or damages received as a result of the adjudication or settlement of his claim by a court or other authority, shall be deemed to be without prejudice to the adjudication

or settlement by such court or other authority of his claim to receive compensation or damges in satisfaction of his claim and shall not be taken into account by such court or other authority in determining the amount of compensation or damages to which he may be entitled in satisfaction of his claim;

(b) In disbursing under the scheme the amount received by way of compensation or damages in satisfaction of a claim as a result of the adjudication or settlement of the claim by a court or other authority, deduction shall be made from such amount of the sums, if any, paid to the claimant by the government before the disbursal of such amount.

Section 11 of this Act, says that, the provisions of this Act and of any scheme framed there under shall have effect notwithstanding anything in consistent therewith contained in any enactment other than this Act.

Section 12 of this Act declares that the Bhopal Gas Leak Disaster (processing of claims) ordinance, 1985 (1 of 1985), is hereby repealed. It is also said that, notwithstanding such repeal, anything done or any action taken under the said ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

A CRITICAL APPRISAL

The Supreme Court of India recently in Bhopal gas tragedy case has cropped out Pertinent questions, like the universal declaration of Human Rights, and the liabilities of the multi-national industries on the soil of India, labour jurisprudence, citizen's rights and liberties, criminal liabilities of corporations, the corporate criminal liability under strict liability, absolute liability, punitive liability and criminal prosecution and punishment to the delinquent and civil rights etc. This philosophy enshrined in Indian constitution under Article 21.[1]

The Bhopal Act, 1985, was challenged by different writ petitions.[2] Counsel for different parties, Mr.R.K. Garg, Ms. Indira Jaising, Mr.Shanti Bhusan and Mr.Kailash Vasudev have made various submissions challenging the validity of the Act on various grounds. The learned Attorney General assisted by Mr.Gopal Subramanium has on the other hand defended the validity of the Act and the

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1. Article 21 of constitution says "No person shall be deprived of his life or personal liberty except according to procedure established by law."
2. Charan Lal Sahu Vs. Union of India
   writ petition No.268 of 1989.
   Rakesh Shrouti Vs. Union of India & Others
   writ petition No.164 of 1986.
   Raj Kumar Keshwani Vs. Union of India & Others
   writ petition No.281 of 1989.
   Nasrin Bi and others Vs. Union of India and others
   writ petition No.1551 of 1986.

settlement. The Supreme Court on 22nd December, 1989 delivered a land mark-decision and upheld the constitutional validity of the Act.

Where the facts of the case were as under:

that between December 1984 and January 1985 suits were filed by several American lawyers in the courts in America on behalf of several victims. It has been stated that within a week after the disaster, many American lawyers, described by some as ambulance chasers, whose fees were stated to be based on a percentage of the contingency of obtaining damages or not, flew over to Bhopal and obtained powers of Attorney to bring actions against UCC and UCIL. Some suits were also filed before the District Court of Bhopal by individual claimants against UCC (the American Company) and the UCIL.

On 6th February, 1985, all the suits in various U.S. District Courts were consolidated by the judicial panel on Multi-District Litigation and assigned to U.S. Distt. Court, Southern Distt. of New York. Judge keen was at all material times the presiding Judge there.

On 29th March, 1985, the Act in question was passed. On 8th April, 1985 by virtue of the Act the Union of India filed a complaint before the U.S. Distt. Court, Southern Distt. of New York.

On 12th May 1986 an order was passed by Judge Keenan allowing the application of UCC on Forum Non Conveniens as indicated hereinafter. The judge Keenan laid down the following conditions in his order:

(i) that the UCC shall consent to the jurisdiction of the courts of India and shall continue to waive defenses based on the Statute of limitation.

(ii) that UCC shall agree to satisfy any judgement rendered by an Indian Court against it and if applicable, upheld on appeal, provided the judgement and affirmance "comport with minimal requirements of due process", and

(iii) that UCC shall be subject to discovery under the federal Rules of Civil procedure of the US after appropriate demand by the plaintiffs.

On 10th July, 1986, UCC filed an appeal before the US Court of Appeal for the Second circuit. It challenged the Union of India being entitled to American mode of discovery, but did not challenged the other two conditions imposed by Judge Keenan. On 26th July, 1986 the Union of India filed cross-appeal before the US Court of Appeal praying that none of the conditions imposed by Judge Keenan should be disturbed. On 14th January 1987 the court of Appeal for the Second Circuit affirmed the decision of Judge Keenan but delated the conditions regarding the discovery under the American procedure granted in favour of the Union of India.

On 5th September, 1986 the Union of India filed a suit for damages in the Distt. court of Bhopal being regular suit No.1113/86. The Distt. Judge of Bhopal on 17th December, 1987 ordered interim relief amounting to Rs.350 crores. Being aggrieved thereby the UCC filed a civil Revision which was registered as civil Revision Petition No.26/88 and the same was heard. On 4th April, 1988 the judgement and order were passed by the High Court modifying the order of

the District Judge, and granting interim relief of Rs.250 crores. On 6th September, 1988 Special leave was granted by the Supreme Court of India in the petition filed by UCC against the grant of interim relief and Union of India was also granted special leave in the perition challenging the reduction of quantum of compensation from Rs.350 crores to Rs.250 crores. On 14th February, 1989 the Supreme Court passed the order of settlement and found that the case was pre-eminently fit for an over all settlement between the parties covering all litigations, claims, rights and liabilities relating to and arising out of the disaster and it was found just, equitable and reasonable, to pass, inter-alia, the following orders:-

"(1) The Union Carbide Corporation shall pay a sum of US Dollars 470 million (Four hundred and seventy millions) to the Union of India in full settlement of all claims, rights and liabilities related to and arising out of Bhopal Gas disaster.

(2) The aforesaid sum shall be paid by the Union Carbide Corporation to the Union of India on or before 31st March, 1989.

(3) To enable the effectuation of the settlement all civil proceedings related to and arising out of the Bhopal Gas disaster shall hereby stand transferred to this court and shall stand concluded in terms of settlement, and all criminal proceedings related to and arising out of the disaster shall stand quashed wherever these may be pending ....."[3]

The Supreme Court exhaustively examined the arguments submitted by the parties:

Mr.R.K.Garg in Support of the proposition that the Act was unconstitutional, submitted that the Act must be examined on the touch stone of the fundamental rights on the basis of test laid down by the Supreme Court in State of Madras Vs. V.G.Row,[4] has reiterated that in considering the reasonableness of the law imposing restrictions of the fundamental rights, both the substantial and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness. And the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard

3. Union Carbide Corporation Vs. Union of India (1989) SC.296, Civil Appeal No.3187-88 of 1988.

4. 1952, SCR 597.

> or general pattern of reasonableness can be laid down as applicable to all cases. The Supreme Court in this case has emphasised that the courts should considered the "prevailing conditions at that time" and observed that "The nature of the right alleged to have been infringad, the underlying purpose of the restrictions imposed, the extent and urgency of the eivil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."[5] Chief Justice Patanjali Shastri reiterated that in evaluating such elusive factors and forming their own conception of what is reasonable, in the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision would play an important role.

The Supreme Court in a comprehensive manner has examined the submission that the impact of sections 3,4 and 11 of the Act, the rights of the victims and the citizens to fight for their own causes and assest their own grievances have been taken away validely and properly, must be judged in the light of the prevailing conditions

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5. Id at p.607.

at the time, the nature of the right of the citizen, the purpose of the restrictions on their rights to sue for enforcement in the courts of law or for punishment for offences against his person or property, the urgency and extent of the evils sought to be remedid by the Act and proposition of the impairment of the rights of citizen with reference to the intended remedy prescribed.

The Supreme Court's attention was drawn by Mr.Garg about Article 21 of Indian constitution, according to which Indian citizens have a right to live which can not be taken away by the Union of India or the Govt. of a state except by a procedure which is just fair and reasonable. The right to life includes the right to protection of limb against mutilation and physical injuries and does not mean merely the right to breath but also includes the right to livelihood. The enforcement of of right to life or limb calls for adequate and appropriate reliefs enforceable in courts of law and of equity with sufficient power to offer adequate deterrence in all cases of corporate criminal liability under strict liability, absolute liability, punitive liability and criminal prosecution and punishments to the delinquents. The damages awarded in civil jurisdiction must be commensurate

to meet well-defined demands of evolved human rights jurisprudence in modern world. It was, therefore, submitted that punishment in criminal jurisdiction for serious offences is independent of the claims enforced in civil jurisdiction and no immunity against it can be granted as part of settlement in any civil suit. If any Act authorises or permits doing of the same, the same will be unwarranted by law and as such bad. The constitution of India does not permit the same.

Mr. Garg further urged before the Supreme Court that deprivation of the rights of the victims and vesting of those rights in the state is violative of the rights of the victims and can not be justifed or warranted by the constitution. Neither section 3 nor section 4 of the Act gives any right to the victims. On the other hand, it is a complete denial of access to justice for the victims. That section 4 of the Act, as it stands, gives no right to the victims and as such even assuming that in order to fight for the rights of the victims, it was necessary to substitute the victims even then in so far as the victims have been denied the right to say, in the conduct of the proceedings, this is disproportionate to the benefit conferred upon the victims.

Further he argued that the conduct of the government in implement the Act is wholly improper and unwarranted. The Govt. is incompetent to represent the victims in the litigations or for enforcement of the claims.

This was an enabling Act only but not an Act which deprived the victims of their right to sue. This Act, deny the natural justice both in the institution under section 3 and in the conduct of the suit under section 4.

An another writ petition was filed by Advocate Shri Rakesh Shrouti. He argued that he and his family members were at Bhopal on 2nd/3rd December, 1984 and suffered immensely as a result of the gas leak. He contended the Union of India should not have the exclusive right to represent the victims in suits against the Union Carbide and thereby deprive the victims of their right to sue and deny access to justice. He further challenged the right of the Union of India to represent the victims against Union Carbide because of conflict of their interest, seeking a declaration to the effect that the Act is void inoperative and unenforceable as violative of Articles 14,19 and 21 of the constituion.

Similarly the other writ petition, namely writ petition No.268/89 which is filled by Advocate Shri Charan Lal Sahu, on behalf of the victims claimed to have suffered damages as a result of the gas leak, challenged the Act. He further challenged the settlement entered into under the Act. He pleaded that the said settlement was violative of principles of natural justice and the fundamental rights of the petitioner and other victims. He asserted that the Union of India was negligent and a joint tort-feasor.

Ms. Indira Jaising on behalf of some other victims drew court's attention to the background of the passing of the impugned Act. She challanged the contention of Union of India that the interest of the victims would be best served only if the Central Government was given the right to represent the victims in the courts of United States as they would otherwise be exploited by 'Ambulance-chasers' working on contingency fees. The dominent object of the Act, therefore, according to Union of India was to give to the Government of India locus standi to sue on behalf of the victims in foreign jurisdiction, a standing which, it otherwise would not have had. Reflecting the above contention she argued that the Act was never intended to give exclusive rights to the

central government to sue on behalf of the victims in India or abroad. She drew the court's attention about the expression 'parens patriae'[6]

Regarding interpretation of the Act, she submitted that the exclusive power to represent the victims given to Government of India under section 3 and 4 of the Act leads deprivation of the victims right to sue for the wrongs done to them and uncanalised and unguided. The expression "due regard" in section 4 of the Act does not imply consentand as such violative of the rights of the victims. A combined reading of sections 3 and 4 of the Act lead to the conclusion that the victims are displaced by the central government which has constituted itself as the "surrogate" of the claimants, that they have no control over the proceedings, that they have no right to decide whether or not to compromise and if so on what terms and they have no right to be heard by the court

6. "Parens Patriae" According to Black's Law Dictionary 5th Edition, 1979, Literally "parent of the country" refers traditionally to role of state as sovereign and guardian of persons under legal disability. State of W. Va. V. Chas. Pfizer & Co., C.A.N.Y., 440 F. 2d 1079, 1089. It is a concept of standing utilized to protect those quasi-sovereign interests such as health, comfort and welfare of the people, inter state water rights, general economy of the state, etc. Gibbs V. Titelman, D.C.Pa., 369 F. Supp.38,54.
Parens patriae originates from the English common law where the King had a royal prerogative to act as guardian to persons with legal disabilities such as infants, idiots and lunatics. In the United States, the parens patriae function belongs with the states.
State attorney generals have parens patriae authority to bring actions on behalf of State residents for anti-trust offences and to recover on their behalf 15 USCA 15 c.
The use of this power to deprive a person of freedom has been limited by recent laws and decisions, e.g. Kent V. U.S., 383 US.541,554-555,86 S. et. 1045,1054, 16 LEd. 2d. 84.

before any such compromise is effected. It was further submitted that even a plain reading of the Act, section 3 read with section 4 did not grant the government immunity from being sued as a Joint tort-feasor.

She want on contending that the Act deprives the victims of their right to life and personal liberty guaranteed by Article 21. The right to life and liberty includes the right to sue for violations of the rights, it was urged.

The counsel further submitted that section 6 of the Act is unreasonable because it replaces the jurisdiction of an independent and impartial civil court of competent jurisdiction by an officer known as the commissioner to be appointed by the Central Govt. No qualification, according to counsel, had been prescribed for the appointment of a commissioner.

It was submitted that, in any event it be decalred that the word "claim" in section 2 does not include claims against central government or State of Madhya Pradesh or UCIL. Hence, rights of the victims to sue the Govt. of India, the state of Madhya Pradesh or UCIL would remain unaffected by the Act or by the compromise effected under the Act. She urged the transfer of other suits filed against UCC, UCIL, State of Madhya Pradesh and Arjun Singh to the Supreme Court for trial and disposal.

Shri Shanti Bhushan appearing for Bhopal Gas Peedit Mahila Sangathan submitted that the Act so far as it empowered the central government to represent and act in place of the victims is in respect of the civil liability arising out of disaster and not in respect of any right in respect of criminal liability. The Central Govt according to shri Shanti Bhushan, can not have any right or authority in relation to any offences which arose out of the disaster and which resulted in criminal liability. He submitted that there cannot be any settlement or compromise in relation to non-compoundable criminal cases and in respect of compoundable criminal cases the legal right to compound these could only be possessed by the victims alone and the central Govt. could not compound those offences on their behalf. Shri Shanti Bhushan urged the court that the provisions of section 3(1) of the Act marely empowers the central govt. to enter into a compromise but did not lay down the procedure which was to be followed for entering into any compromise, the settlement is bad, if part of the bargain was giving up of the criminal liability against UCIL and UCC.

Counsel Shri Kailash Vasude, submitted that Act in question by conferment of exclusive right to sue to central govt. in place of victims contravened "the procedure established by law", for the right to enter into compromise

without consultation of the victims. The procedure substituted, if that be the construction of the Act, would be in violation of the principles of natural justice and as such bad. It was submitted that the concept of "parens patriae" would not be applicable in these cases. It was submitted that traditionally, sovereigns can sue under the doctrine of 'parens patriae' only for violations of their "quasi-sovereign" interests. Such interests do not include the claims of individual citizens. It was submitted that the Act in question is different from the concept of parens patriae because there was no special need to be satisfied and a class action would have served the same purpose as a suit brought under the statute and ought to have been preferred because it safeguarded clamants' right to procedural due process.

On the other hand, Attorney General submitted that where citizens of a country are victims of a tragedy because of the negligence of any multinational, a peculiar situation arises which calls for suitable effective machinery to articulate and effectuate the grievances and demands of the victims, for which the conventional adversary system would be totally inadequate. The state in discharge of its sovereign obligation must come forward. The Indian State because of its constitutional commitment

is obliged to take upon itself the claims of the victims and to protect them in their hour of need.

The Attorney General contended that sections 3 and 4 of the Act should be read to gather alongwith the other provisions of the Act and in particular sections 9 and 11 of the Act. Learned Attorney General submitted that the right of the central government under section 3 of the Act was to represent the victims exclusively and act in place of the victims. In other words, it was urged that the central government is substituted in the place of the victims and is the "dominus litus.[7] Learned Attorney General submitted that the dominus litus carries with it the right to conduct the suit in the best manner as it deems fit, including, the right to withdraw and right to enter into compromise. The right to withdraw and the

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7. 'Dominus Litus' means, in Black's Law Dictionary, 5th Edition, p.437, The Master of the suit, i.e. the person who was really and directly interested in the suit as a party, as distinguished from his attorney or advocate. But the term is also applied to one who, though not originally a party, has made himself such, by intervention or otherwise, and has assumed entire control and responsibility for one side and is treated by the court as liable for costs. Virginia Electric & Power Co. Vs. Bowers 131 Va. 542, 25 S.E. 2d 361.263."

right to compromise conferred by section 3(2) of the Act can not be exercised to defeat the rights of the victims. According to him, the Act engrafted a provision empowering the government to compromise.

The Attorney General submitted the fact that the victims had filed seperate consolidated complaints in addition to the complaint filed by the Govt. of India. Judge Keenan of the District court of America had passed orders permitting the victims to be represented not only by the private Attorneys but also by the govt. of India. Hence it was submitted that it could not be contended that the victims had been excluded. Learned Attorney General submitted that section 4 of the Act clearly enabled the victims to exercise their right of participation in the proceedings. Indeed the Learned Attorney General urged very strenously that in the instant case, Zahreeli Gas Kand Sangharsh Morcha and Jana Swasthya Kendra (Bhopal) had filed before the District Judge, Bhopal, an application under order 1 Rule 8 read with order 1 Rule 10 and section 151 of the civil procedure code for their intervention on bhalf of the victims. They had participated in the hearing before the learned District Judge, who referred to their intervention in the order. The aforesaid Association had also intervened in civil

appeals preferred pursuant to the Special leave granted by Supreme Court to the Union of India and Union Carbide against the judgement of the High Court for interim compensation. Hence the right to compromise provided by the Act, could not be held to be violative of the principles of natural justice.

It was further submitted that the initiation of criminal proceedings and then quashing thereof, would not make the Act ultra vires so far as is conerned learned Attorney General submitted that the Act only authorised the Government of India to represent the victims to enforce their claims for damages under the Act. The Govt. as such had nothing to do with the quashing of the criminal proceedings and it was not representing the victims in respect of the criminal liability of the UCC or UCIL to the victims. He further submitted that quashing of criminal proceedings was done by the court in exercise of planery powers under Articles 136 and 142 of the constitution. Plurality[8] of the court upheld the contention of the Attorney General that the Act in question was passed in recognition of the right of the sovereign to act as Parens Patriae and the government of India, in order to effectively safeguard the rights of the victims in the matter of the conduct of the case was entitled to act as Parens Patriae.

8. The decision of the court was delivered by a five Judge bench Mr.Chief Justice E.S.Mukherjee and Mr. Justice K.N.Saikia delivered concurring opinions while Mr.Justice K.N.Singh delivered seperate judgement. Mr.Justice A.N.Ahmadi and Mr.Justice S.Ranganathan delivered seperate but concurring opinion.

Mr.Chief Justice S.S.Mukharjee and Mr.Justice K.N.Saikia held that, this Act does not deal with any question of criminal liability of any of the parties concerned. On an appropriate reading of the relevant provisions of the Act, it is apparent that the criminal liability arising out of Bhopal gas leak disaster is not the subject matter of this Act and can not be said to have been in any way affected, abridged or modified by virtue of this Act. This was the contention of learned Counsel on behalf of the victims. It is also the contention of learned Attorney General. In this regard the Supreme Court was of the view that, it is the correct analysis and consequences of the relevant provisions of the Act. Hence the submissions made on behalf of some of the victims that the Act was bad as it abridged or took away the victims' right to proceed criminally against the delinquent, be it UCC or UCIL or jointly or severally the Govt. of India, Govt. of Madhya Pradesh, is on a wrong basis. Criminal liability is not the subject-matter of the Act. The learned judges further observed that this Act does not purport to or even to deal with the extent of liability arising out of the said gas leak disaster. Lordship was of the view that it would be improper or incorrect to contend that the Act circumscribed the liability-criminal, punitive or absolute of the parties

in respect of the leakage. The Act provides for a method or procedure for the establishment and enforcement of that liability.

About the constitutionality of the Act, the learned judges observed that the Act does provide a special procedure in respect of the rights of the victims and to that extent the central government takes upon itself the rights of the victims. It is a special Act providing a special procedure for a kind of special class of victims because the disaster being unique in its character and in the recorded history of industrial disasters situated as the victims were against a mighty multinational with the presence of foreign contingency lawyers looming on the scene there were sufficient ground for such differentiation and different treatment. In treating the victims of the gas leak disaster differently and providing them a procedure, which was just, fair, reasonable and which was not unwarranted or unauthorised by the constitution, Article 14 is not breached.

Regarding the scope and ambit of the doctrine of 'Parens Patriae' Chief Justice Mr.Mukharjee held that the jurisdiction of the State's power cannnot be circumscribed by the limitations of the traditional concept of 'parens patriae. In the situation in which the victims were, the state had to assume the role of a parent protecting the rights of the victims who must come within

the protective umbrella of the state and common sovereignty of the Indian people. The Act empowers and substitutes the central govt. It displaces the victims by operation of section 3 of the Act and substitutes the central govt. in its place. The victims have been diverted of their right to once because the victims were disabled. The disablement of the victims **vis-a-vis** their adversaries in this matter is a self evident factor.

Moreover, the Judges held that the Act does not expressly exclude the application of the code of civil procedure. Section 11 of the impugned Act provides the overriding effect indicating that anything inconsistent with the provisions of the Act in other law including the civil procedure code should be ignored and the Act should prevail. Hence the order 1 Rule 8 of CPC will not apply to a suit or a proceeding under this Act.

The Supreme Court observed that the Act had kindled high hopes in the hearts of weak and worn, wory and forlon. The Act generated hope of humanity. The implementation of the Act must be with Justice. Justice perhaps has been done to the victims situated as they were, but it is also true that justice has not appeared to have been done.

Mr.Justice K.N.Singh, supporting the judgement given by Chief Justice S.Mukharji and Mr.Justice K.N. Saikia, said that:

> "If the Act is declared unconstitutional, the settlement which was recorded in this court, under which the UCC has already deposited a sum of Rs.750 crores for meeting the claims of Bhopal gas victims, would fall and the amount of money which is already in deposit with the Registry of this court would not be available for relief to the victims. Long and detailed arguments were advanced before us for number of days and on an anxious consideration and having regard to the legal and constitutional aspects and especially the need for immediate help and relief to the victims of the gas disaster, which is already delayed, we have upheld the constitutional validity of the Act."

It may be added that the court also examined the ruling given by the House of Lords in England in Rylands V. Fletcher[9] case. In Rylands's case House of Lords held

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9. 1868 Vol.3, LR E 1 Appeal cases 30.

that "where the owner of land, without wilfulness or negligence, uses his land in the ordinary manners of its use, though mischief should thereby be occasioned to his neighbour, he will not be liable in damages. But if he brings upon his land anything which could not naturally come upon it, and which is in itself dangerous, and may become mischievous if not kept under proper control, though in so doing he may act without personal wilfulness or negligence, he will be liable in damages for any mischief thereby occasioned."[10] The question of liability was highlighted by the Supreme Court in M.C. Mehta's case,[11] where a constitution bench had to deal with the rule of strict liability. The Supreme Court observed that "the rule in Rylands V.Fletcher evolved in the 19th century at a time when all the development of science and technology had not taken place, and the same can not afford any guidence in evolving any standard of liability consistent with the constitutional norms and the needs of present day economy and social structure."[12] The Supreme Court further observed that "if it is found necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future an account of hazardous or inherently dangerous industries which are concomitent to an industrial economy, the court

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10. Ibid.
11. M.C.Mehta V. Union of India, 1987(1),SCR.819.
12. Ibid.

should not hesitate to evolve such principle of liability merely because it has not been so done in England.[13]

As regard this case (Bhopal Gas leak case) the Supreme Court of India has not followed the ruling of Rylands V. Fletcher[14] and M.C.Mehta's[15] case but it was considered necessary to provide speedy relief to the victims of gas tragedy and so the order were passed to pay US $ 470 million by Union Carbide as compensation money to the Union of India for the said purpose. Therefore due to immediate relief to the victims, the Act was declared constitutionally valid.

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13. Ibid.
14. 1868 Vol. 3 LR E&1 Appeal 30.
15. Supra M.C.Mehta, 1987, (1), SCR, 819.

CHAPTER-V

CONCLUSION AND SUGGESTIONS

CONCLUSION AND SUGGESTIONS

The Bhopal Gas leak disaster was world's worst industrial disaster. This disaster witnessed a threat to the existence of human lives on earth and for echology.

If one considers carefully the chain of events that led up to any of the industrial disasters one can not fail to be struck by the fact that the loss of lives and the human suffering that ensued, were in each instance directly and primarily attributable to what a series of corporate functionaries did or failed to do. The basic 'cause' of each of these disasters lay not in the failure of technical systems but in the failure of individuals in particular the operating management. In case of Bhopal disaster, the supervisor on duty who was new to MIC Unit routinly asked an operator to wash the inside of a length of a piping hear the MIC reactor. This is a time consuming procedure the pipe has to be washed out thoroughly and because safety valves might at any time can leak, it is the standard procedure for the maintenance department to insist a metal called slip blind near a valve to seal off the rest of the system from the tube being washed. The seeds of Bhopal tragedy are suspected to lie in this. Source tell us that the slip blind was not inserted when the operator connected the

water hospipe to the tubes, he was required to wash. Therefore ultimately due to increase in temperature and pressure, the liquid MIC gushed out as a gas through the safety valve and passed through the stack into the out side environment leading to the clamity that befell the population of Bhopal. The corporation has not been provided a proper safety measures and flauted the provisions of the factory Act.

Then the Bhopal Gas leak's victims filed some suits in District court of Bhopal and some other suits were filed by victims individually in various U.S. courts. In the mean time, the Govt. of India realised the multi-effect of the disaster and inefficiency of laws regarding the remedy, prevailent in United States and India. Thus the Govt. of India passed the Bhopal Gas Leak Disaster (Processing of claims) Act, 1985, for the purpose of solving the problem of victims speedily, equitably and efficiently. According to this Act, the Govt. of India was authorised to file a suit in India or outside India and may agree on behalf of victims for a compensation settlement. Therefore the Govt. of India filed a suit exercising its hight under section 3 of the Act, 1985, before the U.S. Distt. Court, Southern Distt.of New York.

Judge Keenan passed an order on the basis of Forum Non Conveniens. The Indian Govt. was required to submit its suit in Indian Court for claiming compensation against Union Carbide Corporation.

On the basis of above facts the suit was transferred in India and so the Govt. of India filed the suit in the District court of Bhopal, on the findings of the Vardrajan committee of Scientists which had gone into the causes of the gas leak, added that adequate safety measures were not taken to avoid disaster. The District Court of Bhopal passed an order against Union Carbide Corporation to pay Rs.350 crores as compensation to the Govt. of India.

The defendant - UCC filed an appeal in the High Court of Madhya Pradesh against the order of District Court. The High Court in its order rightly identified the rule applicable to the Bhopal Gas leak disaster as the one which Supreme Court had developed in M.C.Mehta's Case.[1] Because the facts and circumstances in two cases were similar. Neverthless, the High Court fixed the interim relief of Rs.250/- crores and thus decreased the amount awarded by District Court by Rs.100/- crores.

The Supreme Court in appeals, by two orders dated 14th and 15th Feb. 1989, settled the controversy between the Union of India and the UCC. The quantum of compensation

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1. M.C. Mehta and other V. Union of India AIR, 1987, SC. 1086.

was fixed at U.S. $ 470 million in full and final settlement of all claims, rights and liabilities arising out of tragedy. This amount is no sufficient and adequate in comparision the other disaster cases[2]- A.H.Robins Company's case, Air India's 'Kanishka' crash case and Manville Corporation's case.

The settlement order of U.S. $ 470 million compensation also criticised because the Supreme Court has given a 'clean chit' to the UCC, absolving it from all liabilities so S.C. sell out the rights of the victims. In this case the Supreme Court has not followed its own directions given in M.C, Mehta's case. Even more the Supreme Court has not imposed criminal liability of the disaster upon tne UCC. The Supreme Court argument based, that the 'criminal liability was not provided in Bhopal Gas leak Disaster (processing of claims) Act, 1985, so it was not imposed on UCC'.

The Carbide case has received a mixed reaction within and out side India. After the change of Govt. in 1989, the National Front Government has decided to oppose the U.S. $ 470 million (Rs. 705 cr.) settlement reached last year with the multinational Union Carbide Corporation in the Bhopal gas leak disaster case which give

2. In 1986, A.H.Robins Company made the payment of $ 520 million for settling 9450 claims relating to injuries from Dalkon Shield.
   - In June 1984, the relative of each killed in the Air India crash was provided Rs.85000/-.
   - An offer of $ 2.5 billion by Manvilla Corporation was made for an estimated 60,000 claims for damage caused by asbestos.

a one-time interim relief to victims.[3]

Mr. Dinesh Goswami Law & Justice Minister, told a press conference, that the new government has decided to support the petitioners in the public interest review petitions before the Supreme Court against the amount reached in the settlement between the Govt. of India during the Congress rule and also on the extinguishing of rights of victims to sue the multinational on its criminal liability in the disaster. He further said that the government has decided to support the petitioners in the review petition because it feels that the US $ 470 million compensation to the victims is 'not adequate.'

The Union Carbide spokesman, Mr.Bob Berzor, has voiced Union Carbide's Confidence that 'the effort of the Indian National Front Govt. to reopen the issue of compensation for the Bhopal disaster will fail.' He further said that 'if the Indian government reopens the carbide compensation issue, the result will be endless litigation and foreign companies will think twice before putting their money in India.'[4]

Besides all this political heat and dust, it is clear that the US $ 470 million compensation awarded in

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3. The Times of India, New Delhi: Centre to oppose Carbide settlement Interim relief announced dated 13th Jan.1990, p.1.

4. The Times of India, New Delhi: Reopening of Carbide case will fail, dated 15th January 1990, p.1.

this case is not sufficient and the amount be reviewed by our Supreme Court.

SUGGESTIONS

The development of science and technology is necessary for the progress of society. Advantage is the one side of the science and technology. And the other side of which is disadvantage. Advantage and disadvantage of science and technology are complimentary to each other, which can not be seperated from each other. The disadvantage of science and technology comes into existence in the form of chamical disaster, pollution of environment which poses an eminent danger to human population and other living being on earth.

Now the question arise, How these Industrial disaster may be prevented? or How the chances of such industrial disaster may be minimised? For the said purpose, the following suggestions are considered valuable, these are as follows:-

(1) The Govt. should follow certain norms and standards before granting permissions or licences for the running industries dealing with materials which are of dangerous potentialities. The Govt. should, therefore, examine or have the problem examined by

an expert committee as to what should be the conditions on which future licences and/or permission for running industries on Indian soil would be granted and for ensuring enforcement of those conditions, sufficient safety measures should be formulated and scheme of enforcement indicated. The Govt. should insist as a condition precedent to grant of such licences or permissions, creation of a fund in anticipation by the industries to be available for payment of damages out of the said fund in case of leakage or damages in case of such industrial operation, or failure to ensure measures preventing such occurance. Special procedure must be provided for and the industries must agree as a condition for the grant of licence to abide by such procedure or to abide by statutory arbitration.

(2) The law relating to damages and payment of interim damages or compensation to the victims of this nature should be seriously and sufficiently examined by the appropriate agencies.

(3) There must be 'Industrial disaster fund', contribution to which may be made by the Govt., the industries whether they are transnational corporations or domestic underlakings public or private.

The fund should be permanent in nature, so that money is readily available for providing immediate effective relief to the victims. This may avoid delay, as has happened in the instant case in providing effective relief to the victims.

(4) In order to avoid delay and to ensure immediate relief to the victims it may be suggested that the law made by the parliament should provide for constitution of tribunals regulated by special procedure for determining compensation to victims of industrial disaster or accident, appeal against which may lie to the Supreme Court on limited ground of questions of law only after depositing the amount determined by the tribunal.

(5) The Govt. should now take very serious measures to drawup rehabilitation scheme for the affected people, because a very large section of them have been rendered unfit for human work. However, they can do some kind of work. Therefore the Govt. should provide loan to the victims on easy instalments basis.

(6) The hospital facilities must be adequately provided to the gas victims. Medicines prescribed must be available in hospitals so that victims have not to buy them from open market.

RECENT DEVELOPMENT

A five judges constitutional bench of the Supreme Court headed by Chief Justice, Mr.Sabyasachi Mukherji, accepted a central Govt.'s scheme to provide interim relief of Rs.360 crores to residents of the severely affected areas in the Bhopal gas tragedy. The judges, while accepting the scheme of interim relief of Rs.200 per person every month, made it clear that the category of victims already getting interim relief of Rs.750 per family would be entitled to an amount, whichever is higher. The Court said victims getting medical relief of Rs.500 every month would also be entitled to an interim relief of Rs.200 per month. The court further said different categories of victims who have already got a lum sum payment of Rs.3000, and 1000 would be entitled to the interim relief of Rs.200 per month. The amount already paid would not be recoverable.[1]

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